

## **DOCTORAL THESIS**

### **A theological analysis of children's rights in the context of working children in South East Nigeria**

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**A theological analysis of children's rights in the context of working  
children in South East Nigeria**

**by**

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**A thesis submitted in partial fulfilment of the requirement for the  
degree of  
Doctor of Philosophy (PhD)**

**Department of Humanities**

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**DEDICATION**

**Every Child Worker in Nigeria**

**&**

**My Late Parents: James & Georgina**

**My siblings and their families: Simon, Cosy J. & Uchechukwu**

## LIST OF ABBREVIATIONS AND ACCRONYMS USED

ACERWC - African Committee of Experts on the Rights and Welfare of the Child

*ACHPR – African Charter on Human and People’s Rights*

*ACRWC – African Charter on the Rights and Welfare of the Child*

AU – African Union

*CA - Centesimus Annus*

CBCN – Catholic Bishops’ Conference of Nigeria

CEDC - Children in Especially Difficult Circumstances

*CRA – Child Rights Act*

*CRC – Convention on the Rights of the Child*

*CYPA – Children and Young Persons’ Act*

*CSDC - Compendium of the Social Doctrine of the Church*

*CV - Caritas in Veritate*

*DG - Declaration of Geneva*

*DH - Dignitatis Humanae*

*DRC – Declaration of the Rights of the Child*

*DRMC – Declaration of the Rights of Man and of the Citizen*

*DRWAC – Declaration on the Rights and Welfare of the African Child*

*EG - Evangelii Gaudium*

*EV - Evangelium Vitae*

FOS - Federal Office of Statistics of Nigeria

FRN – Federal Republic of Nigeria

FMLPE - Federal Ministry of Labour and Productivity/Employment

*GS - Gaudium et spes*

ILO – International Labour Organisation

IPEC – International Programme on the Elimination of Child Labour

JDPC - Justice, Development and Peace Commission

*LE - Laborem Exercens*

LMIS - Labour Market Information System

*LS - Laudato Si`*

*MM - Mater et Magistra*

MOLP – Ministry of Labour and Productivity

MOWASD – Ministry of Women’s Affairs and Social Development

NCLS - National Child Labour Surveys

NAP – National Action Plan for the Elimination of Child Labour in Nigeria

NAPTIP – National Agency for the Prohibition of Traffic in Persons and Other  
Related Offences

NBS - National Bureau of Statistics

NDHS - *Nigeria Demographic and Health Survey*

NGO – Non-Governmental Organization

NHRC – National Human Rights Commission

NIS – Nigerian Immigration Service

NPC - National Population Commission

*NPCL – National Policy on Child Labour*

NPF – Nigeria Police Force

*OA - Octogesima Adveniens*

OAU – Organisation of African Unity

*PT - Pacem in Terris*

*PP - Populorum Progressio*

*QA - Quadragesimo Anno*

*RH - Redemptor Hominis*

*RN – Rerum Novarum*

SCIU – Save the Children International Union

SIMPOC –Statistical Information and Monitoring Program on Child Labour

*SRS - Sollicitudo Rei Socialis*

*UDHR – Universal Declaration of Human Rights*

UN – United Nations

*UNDRC – United Nations Declaration of the Rights of the Child*

*UDHR - Universal Declaration of Human Rights*

UNICEF – United Nations International Children’s Emergency Fund

UNTOC – United Nations Transitional Organised Crime Convention

USDOL – United States Department of Labor

USEA – United States Embassy Abuja

WCWC - *World Child Welfare Charter*

## ABSTRACT

Despite the availability of child's rights legislation for the fight against exploitative child labour, it still thrives in its various forms in Nigeria. The dignity of human labour seems to lessen when it comes to children in Nigeria. The research focuses on child labour practices in South East Nigeria, an area predominantly made up of Catholics. The research contends that child's labour legislation is insufficient in preserving the dignity and rights of working children especially in the informal sector, away from the view of law enforcement agents. The goal of the research is to support the efforts of the Catholic Church in Nigeria with a synthesized theologico-legal resource for the protection of the rights of working children. The research observes that there is a near total absence of reference to working children in Catholic social teaching. Working children were not directly included in the historic encyclical of John Paul II (1981) on human work, *Laborem Exercens*. The research integrates the legislation on children's rights with the social teaching of the Catholic Church in a bid to provide a Christian basis for supporting and developing laws protecting the rights of working children. The Catholic Church upholds the natural law/rights tradition. The natural law/rights tradition places the Catholic Church on familiar ground for the acceptance of "human rights" that are founded on the human being created in the image of God. As a panacea to exploitative child labour, it offers a theologico-legal resource for working children made up of twenty sample articles. It suggests "see-dialogue-judge-act-accompany" as a child-sensitive social justice principle. It encourages the formation of children's workgroup/solidarity, foster family support groups and Catholic agencies for working children to ensure that the recommendations of the research are implemented and thereby promote a good practice of child labour in South East Nigeria.

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## CHAPTER 1

### GENERAL INTRODUCTION OF THE RESEARCH

#### 1.1 Introduction

Over ten years ago, Nigeria ratified the main international convention on child labour, the 1989 *Convention on the Rights of the Child* (hereafter *CRC*) and the regional *African Charter on the Rights and Welfare of the Child* of 1990 (hereafter *ACRWC*). Despite the measures taken globally, regionally and locally against child labour, it has continued to thrive in different forms in Nigeria. In Nigeria, children work as street vendors, beggars, shoe shiners, car washers, car watchers, scavengers, feet washers, apprentice in car mechanics, vulcanisers, bus conductors, iron/metal workers, carpenters, tailors/weavers, hair dressers/barbers, caterers, domestic servants, farm and quarry workers (UNICEF Nigeria, 2015).

The United Nations' *CRC* recognizes the child as having the dignity of the human person by attributing the fundamental rights of a person to the child. The *CRC* was adopted on 20<sup>th</sup> November 1989 and entered into force on 2 September 1990. The Holy See, which represents the Vatican City State of the Catholic Church signed and ratified the *CRC* on 20 April 1990. It is to be expected that since the Catholic Church in her social teaching acknowledges the need to respect the dignity of children and has ratified child's rights legislation as contained in the *CRC*, greater attention would have been given to children in pontifical and conciliar documents. However, the reverse seems to be the case as there is a near total absence of references to children and working children in the principal documents on social teaching of the Catholic Church (Regan, 2014).

The *National Modular Child Labour Survey country report Nigeria 2000/2001*<sup>1</sup> suggests that over 15 million (15,027,612) children are working in various parts of Nigeria. Out of this number of working children, more than 6 million (6,102,406) are not attending school. Over 2 million children (2,366,449) are exposed to work for 15 hours or more. About 70% of working children whether schooling or non-schooling started work as early as 5-9 years old. The population of working children makes up about 31.1% of the overall population of children in Nigeria (FOS, 2001). Furthermore, ILO (2017) *Global estimates of child labour: Results and trends, 2012-2016* places the regional prevalence of child labour in Africa at 19.6% as against Europe and Central Asia that is 4.1%. A global estimate of 152 million children between 5 and 17 years are in child labour where almost 73 million of these children are in hazardous work. It puts the number of children working whether child labour or permitted forms of work at 218 million worldwide. However, the report recorded a decline in child labour from 2012 to 2016, implying that globally tangible advances has been made in the fight against exploitative child labour. The report avers that a breakthrough in Africa in the fight against child labour will be critical to ending its threat globally. Similarly, there is a moderate advancement in the fight against the worst forms of child labour in Nigeria (USDOL, 2017)<sup>2</sup>.

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<sup>1</sup>It is available at the Federal Office of Statistics of Nigeria (2001) National modular child labour survey country report, Nigeria 2000/2001. It is referred to in this research as FOS (2001). The International Labour Organisation (ILO) and Statistical Information and Monitoring Programme on Child Labour (SIMPOC) carried out this survey. It is a comprehensive report on the issue of child labour in Nigeria. The problem is that there is no recent survey that has such depth in Nigeria. Available at: <http://www.ilo.org/ipec/ChildlabourstatisticsSIMPOC/Questionnairesurveysandreports/lang--en/index.htm> (Accessed, 20/11/2017).

<sup>2</sup> United States Department of Labour, *2017 Findings on the Worst Forms of Child Labour - Nigeria*, 20 September 2018. Available at: <https://www.refworld.org/docid/5bd05ae22.html> (Accessed 28/02/19).

However, it is a matter of concern that the South East Nigeria largely populated by Catholics is not free from exploitative child labour practices. The Catholic Church in South East Nigeria has involved some programmes for the welfare of marriages, family, children, youths and poverty alleviation. Catholic groups working for the protection of children from economic exploitation would need a theological resource that synthesizes the Catholic social teaching with the demands of children's rights for working children. The researcher's experience as a Catholic priest who grew up in Nigeria and witnessed children working in unjust conditions is an advantage for this research. The researcher's knowledge of child labour practices in Nigeria and the near neglect of working children in Nigeria make this research necessary and urgent.

Although, children have rights that are specific to them as children such as, the rights to education (article 28 of *CRC*), this research argues that since children are accorded the dignity of the human person in human rights legislation, children deserve just working conditions like adults (*CRC*, 1989). There are gaps in the implementation and enforcement of child labour legislation in South East Nigeria. This research is intended to provide a theologico-legal resource that will inform pastoral praxis of Catholic parishes and agencies in relation to their responsibilities towards working children. The researcher intends to achieve this through a theological analysis of Catholic social teachings in the context of child labour legislation and implementation in Nigeria. The researcher argues that an enhanced understanding of working children and the work they do in specific religious and cultural contexts will be relevant in ensuring dignified working conditions and protection from economic exploitation.

## **1.2 Aims and objectives of the research**

In Nigeria, the dignity of human work seems to lessen when it comes to children. The formulation of programmes for the welfare of children as regards work requires more positive expression. The specific aim and objective of the research is to provide a theologico-legal resource for Catholic Churches and agencies that work in the area of social justice, especially those working for the welfare of working children. It intends to analyse the common aims of the legal instruments that protect children's rights from the perspective of the Catholic social teaching in the context of the prohibition of unjust child labour and protection of working children from economic exploitation. It seeks to contribute to the protection of working children through a theological analysis of child's rights legislation. It strives to integrate the legislation on children's rights with the social teaching of the Catholic Church in a bid to provide a Christian basis for supporting and developing laws protecting the rights of the child in the context of working children in South East Nigeria.

Following from the above aims and objectives, the research questions are:

- i. To what extent could Catholic social teaching provide a framework that could enhance a fuller realization of the rights of working children?
- ii. To what extent could Catholic social teaching contribute to dissuading the practice of unjust child labour among the Christian population in South East Nigeria? <sup>[1]</sup><sub>SEP</sub>
- iii. To what extent could Catholic social teaching contribute to promoting a positive image of working children and the work they do in South East Nigeria? <sup>[1]</sup><sub>SEP</sub>
- iv. To what extent could Catholic social teaching encourage the Catholic Churches and agencies in protecting working children in South East Nigeria?

The Nigerian situation suggests that human rights legislation need to be applied more thoroughly to working children. Lapses in legislation and enforcement could be bridged by a good theological analysis of these rights. Nigerians are deeply religious people and South East Nigeria is predominantly made up of Catholics. If the affairs of working children were integrated into the Catholic social teaching, it could help Christians to be familiar with child labour legislation and address issues that legislation could not reach, especially in the informal sector.

The near absence of working children in Catholic social teaching is addressed by this research. The rights of working children are not well represented in the modern historic encyclical of John Paul II (1981) on human work, *Laborem Exercens*. The Catholic Bishop's Conference of Nigeria and various dioceses, including dioceses in South East Nigeria, are engaged in many pastoral activities such as, the rescue of exploitative child labour victims and protection of working children. This research intends to support the efforts of the Catholic Church in Nigeria with a synthesized theologico-legal resource that integrates the provisions of children's rights for working children into the Catholic social teaching. This research is meant to provide a theologico-legal resource in the area of working children in order to embellish the legislation that prohibits exploitative child labour and respond to the lack of specific theologico-legal resource for working children in South East Nigeria. It will contribute to knowledge by showing the connections between the rights of working children and Catholic social teaching on the dignity and rights of workers, including working children. It argues that an appreciation of the spiritual dimension of human work adds value to the dignity of working children and the work they do.

### **1.3 The research context**

The research focuses on all the Catholic dioceses in the South East geo-political zone in Nigeria. Nigeria has six geo-political zones and none of these geo-political zones is independent of the federal government. As such, a brief understanding of Nigeria and its people would be of benefit to understanding the challenges of every Nigerian child, especially working children in South East Nigeria. The next section gives a brief note on Nigeria and its people before situating the research on the thirteen Catholic dioceses in South East Nigeria in the later section.

#### **1.3.1 Nigeria and its people**

Nigeria is a West African country and the most populous country in Africa. It has territorial boundaries with the republic of Cameroon on the east, the republic of Benin on the west and the republics of Niger and Chad in the north. Nigeria occupies a land mass of approximately 923,768 square kilometres beginning from the Gulf of Guinea on the Atlantic coast in the south to the borders of the Sahara desert in the north (NDHS, 2014)<sup>3</sup>.

Nigerians are deeply religious people. Ethnicity and religion are the two issues that have always tended to tear apart the country with its accompanying political undertones. Though Nigeria could be seen through the diversity of its languages and

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<sup>3</sup> National Population Commission (NPC) [Nigeria] and ICF International (2014) National Population Commission – NPC/Nigeria and ICF International. 2014. Nigeria Demographic and Health Survey 2013. Abuja, Nigeria: NPC/Nigeria and ICF International. Available at: <http://dhsprogram.com/publications/publication-fr293-dhs-final-reports.cfm> (Accessed: 21/04/2017). It is referred to in this research as NDHS (2014).

cultural groups, economic needs made mobility within the country a common occurrence. Significantly, all over the country there is a mixture of people with various ethnic and religious backgrounds, especially in the urban cities. With the coming of the British, English became the common language of communication in Nigeria within the literate groups (FRN, 2017). The English language is taught in schools all over the country. However, there is a version of English used by many countries in West Africa sub-region called Pidgin English. Pidgin English combines the English language with various dialects from different ethnic groups. Although, Pidgin English is not taught in schools, it is the commonest street and market language spoken by vast number of people in their daily activities, including working children in South East Nigeria.

Before the discovery of crude oil in Nigeria in January 1953, the primary sources of state revenue and foreign exchange were agricultural produce and raw materials. In 1960 when Nigeria became independent, the agricultural industry provided jobs for over 90% of the Nigerian working population. As time went on, the strength of agriculture in powering the economy waned especially when oil and gas exports became the main stay of Nigerian economy (NDHS, 2014). Apart from oil, Nigeria has other natural mineral resources and precious stones such as barites, gypsum, kaolin, marble, gold, lead, zinc, salt, clay dolomite, tantalite, limestone, uranium, iron-ore, lignite, coal, talc, barite, bitumen, gemstones, cotton, dolomite, glass-sand, flakes, phosphate, potash, silica sand, laterite, tin, wolfram, bauxite, fluoride, and lots more. There are tremendous opportunities to expand and invest in the solid mineral economy of Nigeria but the situation is that insufficient attention is given to these other mineral resources. Much attention has been given to oil. The proven oil reserve

in Nigeria is set at 23 Billion barrels and gas reserve is 160 Trillion cubic metres (FRN, 2017).<sup>4</sup> This has led to limited economic investments and poverty, which inadvertently forces children to work. To ensure that the best interest of every Nigerian child is preserved, a theologico-legal resource would seem to be of relevance, as a legal child rights framework alone is insufficient in discouraging unjust and exploitative child labour and protecting the rights of working children in South East Nigeria.

In addition, the judicial system and government regulations impede foreign investment. The banks and other micro economic sectors are exposed to the energy sector. Electricity prices are regulated in Nigeria. There is increase in the number of nonperforming loans. The judiciary is presumed to have some independence but suffers from unhealthy political interference, corruption and insufficient funding. Corruption is not properly investigated and the culprits are not always prosecuted. There is the issue of selective application of justice in the fight against corruption. Lawlessness with impunity is common among all levels of government in Nigeria. Protection of property rights is weak and currency devaluation has increased the rate of smuggling and currency abuse (Index, 2017).<sup>5</sup> All these socio-political and economic turbulence in Nigeria adversely affect workers of all kinds including working children in South East Nigeria.

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<sup>4</sup> Federal Republic of Nigeria Available at: [www.nigeria.gov.ng/](http://www.nigeria.gov.ng/) (Accessed: 27/04/2017). It is referred in the research as FRN (2017).

<sup>5</sup> 2017 Index of Economic Freedom, <http://www.heritage.org/index/country/nigeria> (Accessed: 22/04/17). It is referred in this research as Index (2017).



Without going further into the socio-political and economic history of Nigeria, it is sufficient to know that corruption has been a major cause of economic crisis and poverty in Nigeria (Falola & Heaton, 2008). Political instability, ethnic and religious conflict and corruption has badly affected the Nigerian economy. It is situations like this that has created child poverty and child labour practices.<sup>6</sup>

### **1.3.2 The Christian religious context**

A brief understanding of the Christian religious context of the research area is important. In her historical excursus of Christianity in Nigeria, Elizabeth Isichei holds that the first Christian missionaries landed in Benin in 1515 (Isichei, 1983). In the sixteenth century, the growth of Christianity in these areas was not steady but for certain it “modified the traditional religion itself” (Isichei, 1983:319).

In the nineteenth century, the Niger mission started when two C. M. S. representatives, namely J. F. Schon and Samuel Crowder landed in 1841. By 1857, permanent posts were already established at Onitsha and Igbede. There were many other points in Niger Igboland that had missionary posts in the 1860s. Samuel Ajai Crowther was later ordained a bishop in 1864. The Niger mission was not successful in involving local agents. So the early missionaries struggled with insufficient human and financial resources. A marginal impact of the Catholic faith continued up to the 1920s as people remained “indifferent or hostile” to the white missionaries (Isichei, 1983:324).

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<sup>6</sup> For further reading, see Falola, T. & Heaton, M (2008) *A History of Nigeria*. Cambridge: University Press. The study exposes how political instability, ethnic and religious conflict and corruption especially by the political class adversely affected the economy. Such situations give rise to family poverty forcing children to work in unhealthy and exploitative conditions.

Later in the nineteenth century, there was a new departure in Christian missionary activity where a minority of communities were involved especially in the south. It was at this time that Protestant missionaries came to the scene and thus there was a “proliferation of Catholic missionary congregations, some of which, such as the Society of African Missions or the Congregation of the Holy Spirit, were destined to be deeply involved in Nigeria” (Isichei, 1983:319). A Methodist mission was founded at Badagry in 1842, with a station in Abeokuta in 1846 and the Presbyterians arrival in Calabar happened in the same year. Later in 1850, the first missionaries of the Southern Baptist convention arrived in Nigeria.

However, regarding the early Christianisation of Igboland in South East Nigeria between 1857 -1967, it all began with the coming of the European missionaries who landed on the shores of the River Niger in the mid-nineteenth century and began to explore the Igbo area. “The exploration of River Niger (1830-57) laid the foundations of the Christianisation of Igboland” (Burgess, 2008:48). Many Churches participated in the evangelization of the Igboland, the mainstream churches like Catholic Church, Anglican Church and the evangelical revival churches. This contributed to an increased missionary efforts and growth. There was a spread of Christianity from Onitsha, Aboh, Owerri, Cross River and beyond. It was in 1885 that the Holy Ghost Roman Catholic Missionary Society arrived and opened a mission in Onitsha which later became the headquarters of Catholic Mission in Eastern Nigeria. It is remarkable that: “missionary activity in Nigeria in the nineteenth century was largely the work of Africans. Until the white takeover of the 1880s, the C. M. S. mission on the Niger and in the Delta was entirely staffed by Africans, under a black bishop, Samuel Ajai Crowther. In Yorubaland, expatriate missionaries worked side by side with Nigerian pastors...” (Isichei, 1983:320).

By 1866, Catholicism was already well established in Lagos. By 1890, Abeokuta had a well-established Catholicism. The S.M.A fathers tried to evangelise Lokoja in 1884 but their success was inhibited by the influence of Islam and later moved over to Asaba with greater success. In 1885, some Holy Ghost Fathers began what they originally called “the Benin mission” but due to the inability to get transport to go further, they remained in Onitsha in South East Nigeria. The study maintains that:

In the first three decades of the nineteenth century, this small beginning was to lead a very large-scale movement of Catholicism, among the Igbo. But at the end of the nineteenth century, the Catholic presence was confined to a small handful of posts on the Niger and Anambra.

(Isichei, 1983:321).

With regard to how finally some parts of Nigeria, especially South East Nigeria widely adopted Christianity, the credit should be given to the establishment of schools.

Both Catholics and Evangelicals have strong internal disagreements about whether evangelisation was best carried out by contact with individual adults or through schools. The early French-speaking Fathers on the Niger favoured the first course, Bishop Shanahan the second. Crowther favoured schools. An English Evangelical was sharply critical of his approach.

(Isichei, 1983:327).

Burgess (2008) upholds that there are two main factors that have affected the Igbo religious history namely the British colonialists and Christian missionaries in the mid-nineteenth century and the granting of independence in 1960. In pre-colonial era, “religion was interwoven into the fabric of Igbo traditional political culture... in contrast to modern Western political systems, traditional Igbo political institutions looked to religious sources for legitimacy and validation” (Burgess, 2008:30). At this time, agriculture and trade were the main economic activities among the Igbos,

South East Nigeria. Colonialism brought in a new perspective to the Nigerian socio-political and economic landscapes, introducing a totally new economic process having initiated a modern nation state, which undermined the traditional democratic system of government. There was also a shift from the traditional subsistence farming to production of cash crops and export of raw materials. “To facilitate trade, colonialists provided basic infrastructures, mostly established in urban areas, to the neglect of rural areas where the majority of people lived and where most of the production of food and crops took place” (Burgess, 2008:34). This contributed in the movement to urban centres for paid work. Children followed their parents and guardians to the cities due to the presence of improved basic infrastructures and employment opportunities in both private and public sectors of the economy. With an increase in the population of urban settlers, there was an increase in the demand for domestic servants and urban poverty was pervasive. All these and more resulted in children taking up jobs in order to assist in the sustenance of their family units, thereby encouraging child labour practices (Odukoya, 2009).

However, due to the availability of Christian missionary schools in the predominantly Christian South, it became more advanced in terms of Western political ideals and education (Burgess, 2008). According to Nwaka (2013), during the Christian expansion and growth through evangelization in 1920, the Catholics took upper hand in reaching the people in South East Nigeria as a result of the language they used in teaching at schools. Nwaka (2013) reports that;

Given that the CMS schools taught in vernacular and the Catholic schools used English, the Igbo (who cherished English as a novelty and saw its advantages in colonial matters) sent delegations to the missionaries asking for mission schools in their towns. Thus education was used as an effective instrument for accessing the interiors of Igboland from Onitsha.

(Nwaka, 2013: 81).

The quest for Western education in the South Nigeria resulted in competition in the employment market and increased expectations. Consequently, there was increase in unemployment leading to search for survival. This situation encourages different kinds of crime, not excluding exploitative child labour practices.

It is important to note that the missionaries also reached the interior lands of Igboland, South East Nigeria, not only through the use of schools. The missionaries also provided medical cares and services which “generated competition among towns and villages for missionaries’ presence in their midst and won converts to the Church” (Nwaka, 2013:82). Examples of such hospitals in South East Nigeria included Holy Trinity Hospital Onitsha, Our Lady of Lourdes Hospital Ihiala, Holy Rosary Hospital Emekuku, and Holy Rosary Hospital Nsukka, amongst others.

After Nigeria’s independence in 1960, the process of decolonisation brought about many changes in Nigeria’s political and socio-economic life. With the new “large-scale nation state” emerging from traditional local community, growth in economy and progress in educational sector saw the Igbos soaring. Agriculture at this time gave way to oil export as the mainstay of Nigeria’s economic foreign exchange. Due to pervasive corruption, especially among the political class, the high sense of achievement gave way to disillusionment. In the midst of this, so many other factors led to the 1967-1970 Biafran-Nigerian war. This left South East Nigeria in a situation of great lack as infrastructure and utilities were destroyed. According to Nafziger, in his article on the “The Economic Impact of the Nigerian Civil War”, unemployment was widespread before and after the war with greater impact on South East Nigeria. In his words: “The rate of unemployment increased in 1966-7, prior to the civil war,

as a result of the drop in business activity and the decline of emigration to other socio-ethnic group areas...After the war the rate rose, with a disproportionate share of the unemployment in the areas surrendered by Biafra” (Nafziger, 1972: 229). Unemployment leads to poverty. Consequently, the areas surrendered by Biafra, the South East Area, were left in poverty and diseases, lack of food and medical facilities, among other consequences. Government policies hindered the rehabilitation of Igbo area in Nigeria, that is majorly South East Nigeria (Burgess, 2008). In comparison to the impact of the war between Nigeria and Biafra, Nafziger (1972:239) maintains that the “adverse impact of the conflict on the level of living in Biafra was greater than in Nigeria”, a situation which created an increased quest for survival not excluding the use of child labour practices of all sorts.

Overall, within the 20<sup>th</sup> century Christianity in Igboland gradually developed and the number of Christians in Eastern Nigeria, due to rapid expansion, outnumbered those west of the Niger. According to Burgess (2008), the missionary rivalry between the Catholics on one side and the Protestant missions facilitated the missionary activities in Igboland and further growth in number of Christians in South East Nigeria. As the Protestant Churches namely Church Missionary Society (CMS), Presbyterian, Qua Iboe, Methodist amongst others spread and occupied sections of the Igboland, the Catholic Church established churches and schools all through Igboland. As Pilkington observed: “The presence of mission schools, hospitals and art and culture centres is evidence that the Church has entered the daily life and produced an African version of Christianity with Nigerian thought forms” (Pilkington, 1957:158).

### **1.3.3 The Catholic dioceses in South East Nigeria**

The research is focused on all the Catholic dioceses within the South East geo-political zone of Nigeria. There are 56 Catholic Dioceses in Nigeria. Thirteen of these dioceses are within the South East geo-political zone; namely Aba diocese in Abia State, Abakaliki diocese in Ebonyi State, Ahiara diocese in Imo State, Awgu diocese in Enugu State, Awka diocese in Anambra State, Enugu diocese in Enugu State, Nnewi diocese in Anambra State, Nsukka diocese in Enugu State, Okigwe diocese in Imo State, Onitsha Archdiocese in Anambra State, Orlu diocese in Imo State, Owerri Archdiocese in Imo State and Umuahia diocese in Abia State. Some of the dioceses cut across the states. As such, this research is focused on two ecclesiastical provinces in South East Nigeria namely, Onitsha and Owerri. Onitsha ecclesiastical province is made up of the following seven dioceses, namely; Onitsha, Abakaliki, Awgu, Awka, Enugu, Nnewi and Nsukka. Owerri ecclesiastical province is made up of the following six dioceses, namely; Owerri, Aba, Ahiara, Okigwe, Orlu and Umuahia.<sup>7</sup>

The research draws its relevance from the lack of a synthesized theologico-legal resource in the protection of the rights and dignity of working children in Nigeria. It focuses on providing a theologico-legal resource that could benefit working children especially in the South East geo-political zone, one of the six geo-political zones in

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<sup>7</sup> Besides the 56 dioceses in Nigeria, the Maronite Catholic Church of the Antiochian Tradition was elevated at Ibadan on 28<sup>th</sup> February 2018. Further information regarding dioceses in Nigeria could be obtained via this link: <http://www.catholic-hierarchy.org/country/dng2.html> (Accessed 15/10/2018).

Nigeria predominantly Catholic and Igbo.<sup>8</sup> The research is not about the Igbo people and culture though the study area is situated in Igboland. Igbo is one of the three dominant ethnic groups in Nigeria. They are to be found in all parts of the country and even beyond. The Igbos are in all sorts of profession. They are gifted, prominent and successful in trade and commerce (Okoli, 2009).

The people of the South East geo-political zone of Nigeria value education. It has notable number of schools owned by the government, Christian churches and private proprietors. All the five states in South East Nigeria, the focus area of this research, have adopted and adapted the *CRA*, the Nigerian version of the *CRC*. It is to be expected that the dictates of human rights in upholding and preserving the rights of working children should be more effectively applied in South East Nigeria but this seems not to be the case.

Church survey reports gathered from the thirteen Catholic dioceses in South East Nigeria through their Justice, Development and Peace Commission (hereafter JDPC) office show their efforts in the fight against exploitative child labour. Responses through email communication show that all the Catholic dioceses within the research focus area are doing a lot with respect to the welfare of children.<sup>9</sup> However,

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<sup>8</sup> There are five states in the South East geo-political zone of Nigeria, namely; Abia, Anambra, Ebonyi, Enugu and Imo. These five states in the South East geo-political zone of Nigeria share common religious and cultural characteristics.

<sup>9</sup> Various co-ordinators of JDPC in dioceses confirmed the existence of child labour practices in South East Nigeria (Ihebinike, C. (2016) Orlu JDPC (email communication: October, 2016), Eze, L. N. (2016) Awgu JDPC (email communication: September, 2016), Ajayi, S. A. (2016) Caritas Nigeria and JDPC, (email communication: July, 2016), Obi, D. (2016) Nnewi JDPC (email communication: October, 2016), Udoeye, E. (2016) Onitsha JDPC (email communication: October, 2016).



promoting the dignity of working children seems not properly structured. There is a need to give deeper meaning to what Catholic agencies are already doing as regards protecting the rights of working children. There is the presence of non-governmental organizations across the states. The Catholic Church works in collaboration with some government and non-governmental agencies. Some dioceses rely on the resource materials provided by the national and international human rights bodies and some Catholic Church documents. Nevertheless, the needed theological resource that would take into consideration the civil laws at the local and international levels, teachings of the Catholic Church at the universal and local levels, while considering the socio-cultural and political landscape of Nigeria is not yet available for use in the Catholic Church in the South East Nigeria. However sparse these reports are, they point to the fact that child labour practices are still in operation in Nigeria, including the South East Nigeria under study. The need to have a synthesized theologico-legal resource for preservation of the rights and dignity of working children remains relevant.

#### **1.3.4 Statistical representation of working children**

As mentioned in the *Introduction*, the Child Labour Survey recorded 15, 027,612 the number of working children in Nigeria consisting of 7,812,756 working male children and 7,214,856 female working children. Out of the over 15 million working children, over 6 million (6,102,406) can be regarded as being in exploitative child labour as they were not attending school and over 2 million (2,366,449) children worked for 15 hours or more. A total of 3,110,033, that is 15% of female working children and 2,992,373 (49 %) of male working children were not attending school.

Out of the 2,366,449 working children that worked for 15 hours and above, 1,334,605 (54.4%) were attending school whilst 1,021,764 (43.2 %) and 10,080 (0.4%) found in house keeping job were not attending school (FOS, 2001).

In South East Nigeria, children engage in many forms of child labour activities as elsewhere in Nigeria such as car mechanics, farm work, quarry workers, feet washers, scavengers, shoe shiners, caterers, domestic servants, beggars, street vendors, tailors/weavers, hair dressers/barbers, vulcanisers, carpenters, iron/metal workers, car watchers and bus conductors popularly called “agbero” (UNICEF Nigeria, 2015). Children also engage in mason works, packing bricks, pulling out water from deep wells, digging foundation ground for wall or building, and moving heavy loads like bags of cement, rods, and stones as building assistants at work sites. Children also engage in loading and off loading vehicles with heavy goods and pushing wheelbarrows containing goods for sale or in transport for their clients. There are also other forms of exploitative child labour practices like child prostitution and child marriage (FOS, 2001). Some traces of bonded labour may still be present in South East Nigeria as this usually happens away from public view. Child trafficking for various reasons has become another form of child labour that is pervasive in Nigeria, including South East Nigeria (NAPTIP, 2015). According to Okpukpara, *et al* (2006), the most common economic activity engaged by male working children are fetching water, hawking and farming whilst for female working children, the most popular paid work include water fetching, domestic sweeping and hawking. However, there are more female working children in hawking whilst male working children dominate in other activities like bus conducting, load carrying, scavenging and brick laying. The variety of child labour practices in Nigeria,

including South East Nigeria is always evolving as a result of the spate of change in business and merchandise that is trending. This makes legislation insufficient in combating exploitative child labour.

One of the visible forms of child labour in South East Nigeria is the street working children. Okoli (2009)'s observation of street vending children in the marketplace at Enugu in South East Nigeria seem to offer a view into the world of child labour in the geo-political zone.

Mostly children and young people are seen darting around in different directions chasing after customers in moving vehicles, running towards people who call for their wares and bargaining at the top of their voices to convince customers to buy wares... They sell assorted wares in varying sizes and shapes ranging from sachet water, cold juices and soft drinks, popularly called 'minerals', cooked foods, fries, sweets and all sorts of edibles; fresh fruits and vegetables as well as various food stuffs. Some sell inedible wares like batteries and electrical equipment, play-stations and all kinds of toys.

(Okoli, 2009:99).

From the above observation, it could be inferred that child labour practices such as, street working children is prominent in our markets.

According to survey, South West Nigeria recorded the highest number of street children 21.4 %, North Central Nigeria recorded 20.0 % and South South Nigeria reported 21.4 %. North East Nigeria recorded 15.5 %, North West Nigeria reported 14.3 % and South East Nigeria recorded 7.8 % (FOS, 2001). Okoli (2009) suggests that in Enugu, South East Nigeria, street working children are a common phenomenon. Children are informally apprenticed and tutored by their parents or guardians and sometimes by their fellow children at no cost.

On a more boarder perspective, the percentage distribution of children who engaged in different types of work for 15 hour and above, and at the same time attend school varies. Across the geo-political zones, North East Nigeria had 49.3% of children who worked 15 hours and above and had 7 to 10 persons per household. South East Nigeria had 48.6%; South South Nigeria had 46.0%, North West Nigeria had 45.4% and North Central Nigeria had 43.1%. The lowest percentage was found in the South West Nigeria at 22.5%. The distribution for children who had 11 or more persons per household was North Central Nigeria, 23.0%; North East Nigeria, 22.6%; North West Nigeria, 14.5%; South East Nigeria, 10.1%; South West Nigeria, 9.7% and South South Nigeria, 7.8%. Children who worked 15 hours and above and were schooling, those who had 5 to 6 persons per household constituted 38.3% in the South West Nigeria, 28.9% in the South South Nigeria, 27.0% in the North West Nigeria, 24.4 % in the North Central Nigeria, 21.9% in the North East Nigeria and 17.1% in the South East Nigeria (FOS, 2001).

Nationwide, the highest percentage of 39.2% of 5 to 9 years children who worked 15 hours and above and who were not schooling lived in houses which had 5 to 6 persons per household. This is followed by 37.5%, 11.5% and 10.9% who had 7 to 10 persons, 3 to 4 persons and 11 persons or more per household, respectively. The least percentage of 0.9% was found amongst those who lived in houses, which had 1 to 2 persons per household. Regarding children in the 10 to 14 years category and 15 to 17 years category, those who had 7 to 10 persons per household constituted 37.0% while those who had 5 to 6 persons, 11 persons or more, 3 to 4 persons and 1 to 2 persons per household, constituted 32.8%, 16.0%, 10.8% and 3.4%, respectively. From the view point of gender, 39.3% of male working children and 34.0% of female working children were recorded amongst children who had 7 to 10 persons

per household, while those who had 1 to 2 persons per household, had the least 1.5%, male; 5.3% female of working children (FOS, 2001).

Nevertheless, working children support their family finances. Survey reveals that 8.4% of the working children gave all their income to parents or guardians, while 91.6% of them did not do so. Across geo-political zones, 7.0% of working children in South South Nigeria disbursed all their income to parents or guardians. South West Nigeria followed it with 6.0% while the lowest percentage of 2.7% was recorded in the South East Nigeria (FOS, 2001). At the national level, 6.6% of children who earned income and who were not attending school indicated that they often disbursed part of it to their parents/guardians whilst 93.4% of them did not. Across the geo-political zones, it was found that South South Nigeria had 15.3%, the highest percentage of children who gave part of their income to parents or guardians followed by South East Nigeria with 11.6%. The lowest percentage 2.9% was from the North Central Nigeria. Nevertheless, more than 50% of the children who attended school and were engaged in economic activities saved part of their income to go to school. At the national level, 61.1% of the children in economic activity saved “to go to school” whilst 12.7% saved “to start own business” of their own. The remaining 26.2% saved for other goals (FOS, 2001). More children in the rural areas (63.7%) than urban areas (56.3%) saved money to go to school, while more children in the urban areas (13.7%) than rural areas (12.2%) saved to start own business. This implies that working children make a significant contribution to family and national economy.

In addition, parents and guardians acknowledge and value the benefits that accrue from child labour practices. At the national level, 30.7% of parents or guardians indicated that their 'household standard will decline' if the children stopped work. Those who reported that their 'household enterprise cannot operate fully' comprised 19.0%. 2.1% reported that their 'household cannot afford to live' if the children stopped to work. Parents and guardians that could not estimate the possible adverse effect of stopping their children working was 48.3%. According to geo-political zones, South South Nigeria had 42.3% of parents who reported that their 'household standard will decline' if children stopped to work. North East Nigeria had 33.9% and North West Nigeria had 24.5% of parents or guardians whose opinion was that 'household standard will decline' if children stopped to work. Parents or guardians in the North Central Nigeria and South West Nigeria, who gave the same report constituted 21.5% and 17.5% respectively whilst those in the South East Nigeria constituted the least percentage 12.0%. Some were of the opinion that their 'household enterprise cannot operate fully'; North East Nigeria reported 33.4 percent, whilst South East Nigeria reported 31.3%, North Central Nigeria reported 27.5%, South South Nigeria had 11.1%, North West Nigeria reported 10.3% and South West 9.2%. Across the geo-political zones, parents or guardians who reported that their 'household cannot afford to live' if their children stopped work were as follows: South West Nigeria reported 2.6%, North West Nigeria reported 2.4%, North Central Nigeria and South South Nigeria reported 2.3% each and North East Nigeria reported 1.5%. There was no representation of parents or guardians in the South East who reported that their 'household cannot afford to live' if their children stopped work (FOS, 2001). The above statistics is for certain not the current situation in Nigeria but provides a sample statistics into the world of working children in

Nigeria, including South East Nigeria. There is no gainsaying that there are financial benefits that accrue from child labour practices. In some circumstances, the consequences seem to outweigh the financial benefits that accrue from child labour (Okoli, 2009).

#### **1.4 Research methodology**

It is not an easy task to choose a methodology for this kind of research. Methodology is important in every research in order to produce reliable results as “unreliable method produces unreliable results” (Coomans *et al.* eds., 2009:14-15). A variety of research methods will be employed in this research. The research methodology predominantly applied is textual analysis (doctrinal) also known as library-based research. It is text-based, comparative and interpretative, since it involves an analysis, comparison and interpretation of textual sources relevant to the rights of working children from Catholic social teaching and human rights legislation.

It does not involve fieldwork, though it draws upon the experience of working children in Nigeria. Conducting empirical research in Nigeria on working children has many constraints; such as finance, time and the ethical issues related to conducting empirical research with vulnerable children. It is as a result of these constraints that the researcher chose to approach the research in a library-based manner. The research method and approach chosen will lead to the desired result without field-based research as it is intended to provide a theologico-legal resource for Catholic agencies and not an investigation of the actual situations. Directly hearing from children in such a study would have added to the quality of this research but the researcher is compelled in the choice of methodological approach as

a result of the afore-mentioned constraints. The experiences of working children themselves will be used only illustratively. The researcher will extract relevant information from available published statistics and other resources on working children. The textual sources available will be sufficient for theological analysis from where the contribution of the research is expected.

The research approach benefits from the findings of social scientists and so would not run the risk of staying detached from the situation on ground. This research will not be at the risk of losing sight of, or misinterpreting the applicable human rights as a result of overdependence on empirical data. Rather, both empirical data from the social sciences and applicable human rights standards from the legal perspective will be used to enrich this research. Human rights laws are rather means of achieving the desired goal, that is, protection and respect for human dignity including working children. This approach is suited for its purpose as the researcher is aware that “mere adoption of resolutions by international bodies and the mere establishment of new international institutions will not necessarily result in improvement of enjoyment of human rights on the ground” (Coomans *et al.* eds., 2009: 13).

This research is also interdisciplinary. It has been argued that in practice, it is accepted that the judiciary and legislators in order to achieve the desired goal could apply an interdisciplinary approach.<sup>10</sup> Koen De Feyter argues as follows:

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<sup>10</sup> The nature of this research highlights the difference between “doing law” and “thinking about law” (Bianchi, 2016: 5). This research will adopt the approach of thinking about law. Doing law refers to the “enhanced refinement of set of skills and competences that they (law students) previously acquired in their basic law degree” (Bianchi, 2016:5). It is the traditional approach and mainstream approach to international law. However, thinking about law questions what the law says and the authority behind it. This approach does not only settle disputes but also spurs further



If it is accepted that judicial bodies and legislators should aim to achieve effective human rights protection through an interdisciplinary approach, clearly the same holds for human rights research. Human rights research that concerns itself with analysing whether human rights deliver effective protection and that wishes to contribute to the improvement of human rights protection must be interdisciplinary in nature. Obviously, not all human rights research may be concerned with effective protection...

(De Feyter, 2009:230-231).

It is in the spirit of textual analysis and interdisciplinary approach that this research is being conducted. The researcher is aware that when two disciplines come together in interdisciplinary research, there is the possibility that one discipline will be trading on the “prestige or vocabulary of the other or one has to be swallowed by the other” (Bianchi, 2016:11). The researcher is aware that the encounter of human rights as an international law with Catholic social teaching may entail the risk of loss of legal autonomy. However, “an exploration of the different ways of thinking about international law is worth pursuing, including those ways of thinking that have interdisciplinary flavour” (Bianchi, 2016:13). The researcher is quite aware of this possibility and adequate care is taken to ensure that the respected prestige of each discipline is maintained. It has been argued that interdisciplinary research is “notoriously difficult” (De Feyter, 2009:231). This notwithstanding, it has great advantage over the narrow vision of particular disciplines. The manners in which disciplines are specialized greatly affect its particular vision of reality both in natural sciences and social sciences. Disciplines usually “interpret the world according to the paradigms and discursive policies that are prevailing within them at any given time”

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thought on dispute settlement and opens more avenues to gaining the dividends of the human rights law. Thinking about law, in this respect human rights law encourages one “to go beyond the narrow boundaries of the analysis of legal materials and open up to insights from different disciplines” without feeling that the legal authority has been watered down, as a contribution towards “a necessary intellectual inquiry into the meaning and purpose of law and its application” (Bianchi, 2016: 6).

(Bianchi, 2016:12). When the object of study overlaps, as is the case with working children, theological input from the Catholic perspective will enrich the implementation of children's rights. This approach will also prevent one from narrow-mindedness as it presents varied sources of literature. Although there may be various interpretations of rights, "universality stands to be enriched if input from varied societies is taken into account" (De Feyter, 2009:225).<sup>11</sup> This research is not meant to change the human rights laws regarding working children but rather to deepen the meaning of children's rights as a contribution to the implementation of children's rights.

A philosophical approach will be employed in the research. As a philosophical inquiry it seeks deeper knowledge that will enhance the implementation of children's rights in South East Nigeria in the context of working children. It is philosophical since it explores "critically and philosophically about the relationship between the philosophical human rights or human dignity, and the legal human rights" (Follesdal, 2009:234). A philosophically profound conception of human dignity and human rights will be explored using the Catholic theological resources. The researcher uses a philosophical approach while aware that the research is both legal and theological in content. Restoring and preserving the dignity of working children is one of the aims of this research as it seeks to provide a theologico-legal resource for working

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<sup>11</sup> The researcher is aware of the difference between *lex lata* - "the law which is likely to stand up in a court of law from the law as it should be in the opinion of the author (*lex ferenda*)" (Coomans, *et al.* eds., 2009:15). The researcher avoids creating room for any clash between human rights law and the interpretations, as the research has to do with enriching child's rights legislation from Catholic social teaching to enhance practical results. It is not necessarily designed to improve legislation on working children though its contributions could benefit the improvement of legislation on working children.

children.

The research will rely on empirical research and survey results gathered from the United Nations (hereafter UN), National Bureau of Statistics (hereafter NBS), International Labour Organization (ILO) and Statistical Information and Monitoring Programme on Child Labour (SIMPOC) of the International Programme on the Elimination of Child Labour (IPEC). It makes use of information from the SIMPOC *Report on National Modular Child Labour Survey, Nigeria* (2000/2001). Analysis of the rights of working children will be based on three child's rights legal instruments; namely, 1989 *Convention on the Rights of the Child* (CRC), the regional *African Charter on the Rights and Welfare of the Child* (ACRWC) of 1990, and the 2003 *Child's Rights Act* of Nigeria (CRA). The main theological resource to be applied for this analysis is the 1981 encyclical of John Paul II, *Laborem Exercens*, "On Human Work" and other related Catholic social teaching.

### **1.5 Limitations of the research**

This project is a library-based research. As such the researcher will not have a direct contact with working children. Consequently, the research will lack first hand information on the experiences of working children. However, as earlier noted, experiences of working children will be distilled from information taken from libraries to make up for the inability of the researcher to have direct contact with working children.

The researcher is aware that the survey reports used may reflect the interests of various governmental and non-governmental agencies. It will be compared with

other research surveys from individual researchers to ensure that objectivity is not compromised. However, the age of the material from empirical research available may affect the research, as there are limited research works in the area of child labour in Nigeria.

It is also true that human rights research lacks strong “methodological rigor” which may affect the credibility and validity of its findings” (Coomans *et al.* eds., 2009:14). This is because there is a “methodological deficit in human rights scholarship” unlike in legal scholarship. Advancing the reason for this, Coomans *et al.* (eds.) claim that “Lawyers are system builders; they rely on logic to determine whether arguments are compatible with an existing normative setting. Human rights may be but are not necessarily part of this normative setting” (Coomans *et al.* eds., 2009:12) The lack of methodological rigor affects sponsorship and scholarship in human rights research projects, as it is easier for sponsors to see clearly the strength of other research proposals from their methodological presentation, than from human rights proposals.

The researcher is aware that this research may be affected by reflexivity. “In a very general sense, reflexivity refers to the capacity to critically evaluate the way in which our mode of thinking, including our beliefs and values, effects our research and work. Reflexivity is a notion that runs on a relationship between the object and the subject of investigation” (Bianchi, 2016:3). Whenever a researcher approaches an object of inquiry he does so with personal suppositions and presumptions. There is nothing as neutral view without a bias (Bianchi, 2016). The researcher is a Catholic priest and aware that personal mode of thinking, values and frame of reference might affect the research result. Care is taken to ensure that the researcher’s “scholastic

bias” does not adversely affect the objectivity, relevance or value of the research.

## **1.6 Literature review**

This research is primarily double barrelled; it is legal and theological. The legal aspect is provided by human rights legislation in the area of working children at the international, regional and local levels. Catholic social teaching provides the theological dimension of the research. These two frameworks cut across other factors in the dynamics of societal functioning. It will be pertinent to review a few of the earlier researches carried out in the area of working children. This section therefore is a brief presentation of the previous works on working children and the two contexts on which the research stands.

### **1.6.1 Previous works**

There is paucity of materials in the area of working children in Nigeria. Consequently, a review of some relevant articles will be part of the literature review. Uzodike (1990)’s article on “Child Abuse and Neglect in Nigeria – Socio-Legal Aspects” identifies child labour as a prevalent example of child abuse in Nigeria. However, she stressed that not all work done by children is exploitative. The article identifies the following child labour practices in Nigeria such as, nannies, servants, hawking, street trading, bus conducting, work in hotels, restaurants, industry, and agricultural farms. She further observes that some parents regard their children as their private property and this creates difficulty in checking the nature of corporal punishment they give to children within the family. Such attitude of parents and family members regarding children as their private property could be a barrier to checking exploitative child labour especially in the informal sector.

One of the earliest works that gave comprehensive attention to working children is the SIMPOC *Report on National Modular Child Labour Survey, Nigeria* (2000/2001). It explores both the quantitative and qualitative child labour situations in Nigeria. It interrogates the socio-economic situations on which child labour thrives in Nigeria. The report identifies the following child labour practices in Nigeria; street trading, young domestics in private homes, work in agriculture, street children, child prostitution, child trafficking, child begging, carpentry, bus conductors, tailors and weavers, hairdressers and barbers, workers in catering industries, work in mechanic workshop and cottage industries. It examines the laws that are used to fight exploitative child labour, the population of working children in different categories. It highlights the adverse effects of exploitative child labour on children's health and education. It acknowledges the efforts made towards the fight against exploitative child labour by government agencies, IPEC direct action programmes, and other non-IPEC direct action programmes by Non-Governmental Organisations (NGOs). It suggests some recommendations in the bid to ameliorate the effect of exploitative child labour on children. It beckons on the government to invent programs and make policies that would assist in the fight against exploitative child labour in Nigeria. The research falls short of highlighting the contributions of the Catholic Church as a particular group. However, it offers basic background information for the articulation of a theologico-legal resource for Catholic agencies in South East Nigeria.

Of much relevance is D. O. Akhilomen (2006)'s research on "Addressing Child Abuse in Southern Nigeria: the Role of the Church". The research regards child labour as "perhaps the most prevalent and glaring form of child abuse in Southern Nigeria" (Akhilomen, 2006: 237). The study acknowledges the positive role played

by the churches in Southern Nigeria in promoting the welfare of children and thereby contributing to the fight against exploitative child labour. Akhilomen (2006) specifically recognizes that the educational advantage southern Nigeria has over northern Nigeria is as a result of the many mission schools especially of the mainstream churches, Catholic Church and other leading Protestant churches. It notes the contributions of the Catholic Church in the building of schools and hospitals in different parishes and dioceses across the country. It however identifies that sometimes these schools and hospitals are not affordable to the poor. In conclusion, the study insists that “The church ought to be the vanguard of organisations seeking to realise and protect children’s rights in Southern Nigeria... The church has to be vigorous in the pursuit of the role of filling the gaps left between child rights, family welfare, government responsibility and public perceptions” (Akhilomen, 2006: 246-7). My research is a response to the above challenges placed before the various churches in Southern Nigeria, in order to make the church evolve into “an institution with a child friendly attitude after the model of Jesus” (Akhilomen, 2006: 247).

Nevertheless, F. I. Ibanga (2007) in his doctoral thesis on *Child Labour in Nigeria: A Religious Educational Response* exposes the evils of child labour. The study suggests that the problem of child labour could be addressed with religious education as this would help in the prevention of destructive forms of child labour as well as improve the quality of life lived by children. It recognizes that religion plays a vital role in the character formation and protection of the child. Furthermore, Ibanga (2007) believes that educating adults in charge of children on children’s developmental needs and enforcing more collaboration among stakeholders of working children will be of

benefit in upholding the rights and dignity of working children in Nigeria. This research provided a starting point for my current research - *A theological Analysis of Children's Work in the Context of Working Children in South East Nigeria* - as it acknowledges the insufficiency of legislation in tackling the menace of child labour in Nigeria.

On the legal terrain, a doctoral thesis, *Considering the Rights and Best Interests of a Child in a Multi-cultural Civil Society with special reference to Nigeria* by Fortune Ihua-Maduenyi (2008) highlights the difficulty in the universal application of *CRC* to particular contexts like Nigeria. This research using the principle of the best interest of the child as an example shows that the meaning of best interests of a child would seem to vary according to contexts, due to the impact of cultural, religious, economic and social factors. The religious and cultural relativism foreseen in his research is one of the reasons for offering a theologico-legal resource so that a common context could emerge and so become the common springboard for the implementation of child labour legislation in South East Nigeria.

In addition, Rosemary Chinyere Babylaw Okoli (2009) carried out a doctoral fieldwork research on *Children's work: Experiences of Street Vending children and Young people in Enugu, Nigeria*. This research argues that the Western understanding of children's work does not represent children's understanding of work in Nigeria as work is construed as something that adds value to life and part of childhood. The study acknowledges the dangers of vending but insists that work seen as part of childhood prepares children for adulthood and career. The challenge is on devising an effective means to ensure that children's rights as workers are protected



as contained in the international, regional and local human rights legislation. The admission that work is something positive by children in Nigeria as Okoli (2009) observes, forms the foundational springboard for the researcher's theologico-legal research on child labour. Enugu is in the geo-political zone investigated in this research.

Still on efficiency of legislation with regard to children's rights, Wilson Ola Diriwari (2016) in his doctoral thesis on the *Efficacy of the Legal Framework for Child Protection in Nigeria* explores the challenges of employing legal instruments and polices in the fight against child trafficking. It examines the extent formulation of child trafficking laws and policies as well as implementation affects the results of the child trafficking legislation. The research argues that tackling the issue of child trafficking with international, regional and sub-regional legislations and policies are insufficient. The research therefore suggests a more holistic approach by giving attention to re-evaluation of laws and policies where they have proven impractical as well as the issue of better ways of implementation and enforcement of child trafficking laws. Diriwari (2016) concludes:

the way forward for Nigeria can be found in new legal paradigms, political paradigms, and socio-economic paradigms. Issues such as children's participation at work, public awareness, the institutionalization of child fostering, and effective cooperation between states are fundamental in providing a definite response to the problem of child abuse in general and child trafficking in particular.

(Diriwari, 2016: 234).

In this way, to this extent, Diriwari (2016) agrees to the researcher's proposition that legislation is insufficient in addressing the issue of child trafficking in particular and by extension child labour as my current research proposes. However, my research

interest goes beyond revisiting legislations to providing a theologico-legal resource for a Catholic context in order to give more meaning to the rights of working children and improve efficiency in the implementation of children's rights as workers.

Noteworthy is a doctoral thesis research carried out by Oluwafifehan O. Ogunde (2018) on *Entrenching child rights in Nigeria: The Problem of Constitution and Culture* focused on the how constitution and culture impact on the effective implementation of *CRA* of 2003 in Nigeria. The research argues that cultural perceptions contribute to the denial of the Nigerian child as a right holder. It recognizes the nature of the *CRA* as part of the concurrent legislative list and not in the exclusive legislative list. Consequently, although national assembly issued the *CRA*, it has to be incorporated into the state legislation to make it binding to the particular state. Furthermore, in some cultures like Nigeria, international human rights law have been perceived as a foreign legislation as it does not take into consideration the peculiar norm and culture of non-Western societies. Some aspects of Nigerian culture are influenced by religious thoughts and the latter influences the acceptance of *CRA* and its implementation in particular states in Nigeria. The research thereby suggests possible ways this could be addressed for fuller realization of the rights of every Nigerian child. In response to the lack of contextualization of international human rights law identified in this research as a contributory factor to failure in implementation, my current research provides a common theologico-legal framework in which various cultures in the area under study could relate and thereby enable more efficiency in the implementation of human rights legislation as regards working children.

The above-reviewed works form a knowledge base for this research as they affirm the existence of problems associated with child's rights legislation and child labour practices. This research is a contribution towards the protection of the rights of working children and the fight against exploitative child labour. Other works related to working children in Nigerian context will be cited as we progress as the need arises.<sup>12</sup>

### **1.6.2 Legal framework**

There is a lack of resources in this area of research in Nigeria. However, there are research studies carried out in the area of working children by international bodies and agencies like United Nations. Some ministries in Nigeria are charged with the responsibilities of ensuring the welfare of working children, but their commitment and efficiency are yet to be established (USDOL, 2014). Although Nigeria is a signatory to the United Nations' *Convention on the Rights of the Child* of 1989 (*CRC*), which provides for the rights of the child, exploitative child labour still thrives in Nigeria in its various forms. Article 32 of the *CRC* prohibits the exploitation of working children. The rights of working children as contained in the *CRC* and further elaborated with the provisions of the *ILO Convention, no. 138*, concerning the minimum age for admission to employment and its *Recommendation 146 of 1973*, and the *ILO Convention no 182*, concerning the prohibition and immediate action of the worst forms of child labour and *Recommendation no. 190 of 1999*, are insufficient in addressing the exploitation of working children in South East Nigeria.

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<sup>12</sup> Part of the literature review is in the next section on "Research focus". Some of the relevant previous works on child labour in Nigeria are weaved into the main body of the research.

More so, the Africa Union in 1990 adopted the *African Charter on the Rights and Welfare of the Child (ACRWC)*, an African adapted version of the *CRC* in order to make the provisions of the *CRC* more relevant to the African context as it is arguably too Western and too broad (Okoli, 2009). The *ACRWC* reinforces the prohibition of exploitative child labour as provided for by the *CRC* in article 15(1). The provisions of the *ACRWC* situate the universalistic perspective of the *CRC* in an African cultural setting. This makes the *ACRWC* a good legal instrument of foundational value to the development of the rights of children in Africa (Kaime, 2009b).

The Nigerian national legislature in 2003 passed the *Child Rights Act* in order to domesticate the *CRC*. However, for the *CRA* to be operative, it has to be ratified by particular states (Iguh, 2011). According to the Nigerian Constitution,<sup>13</sup> issues in the exclusive legislative list are solely within the law-making preserve of the national assembly while both the national and state houses of assembly legislate on issues in the concurrent legislative list. The *CRA* is under the concurrent legislative list. Although national assembly issued the *CRA*, it has to be incorporated into the state legislation to make it binding to the particular state in Nigeria. The *CRA* as an adapted version of the *CRC* provides for the welfare of working children in the Nigerian context (*CRA*, Section 28). The differences among the 36 states of Nigeria in their adoption and adaptation of the *CRC* at state level create gaps in effectively implementing the provisions of *CRA* in relation to working children in Nigeria. At present, 23 states and the Federal Capital Territory of Nigeria have ratified the *CRA*.

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<sup>13</sup> See Second schedule of the Constitution of the Federal Republic of Nigeria 1999. Part II (4) “Legislative powers”. Available at: <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm> (Accessed: 20/4/2017).

All the South East states of Nigeria, the context of this research, have ratified the *CRA*. The failure of the remaining 13 states to ratify the *CRA* up to this time adds to the challenges of implementing the *CRA* in the fight against the economic exploitation of working children. Out of the 13 remaining states that are yet to sign the *CRA*, 12 are in northern Nigeria (USDOL, 2017). A more comprehensive and exhaustive information on child rights legislation vis-à-vis working children will be given in chapter four of this research.

### **1.6.3 Theological framework**

As earlier stated, the focus area of this research is South East Nigeria, which is predominantly made up of Catholic Church members. The Catholic Church in Nigeria is supporting families and children. The research recognizes the presence and efforts of other Christians and non-Catholics in the area of children's welfare in South East Nigeria. The Catholic Church in Nigeria needs to do more in ensuring that the rights of working children are protected. Perhaps, this could partly be due to lack of resources designed specifically for working children. To address this, the researcher relies largely on Catholic social teaching and related documents. The Catholic Church in her social teaching emphasizes the need to respect the dignity of children (CSDC, 2014). However, children are barely mentioned in the principal documents of the Catholic social teaching (Regan, 2014). The welfare of working children is not well represented in the principal documents on social teaching of the Catholic Church.

Nevertheless, children are mentioned in many places in relation to family, education, marriage and religious formation (CSDC, 2014; *Rerum Novarum*, 1891; *Laborem*

*Exercens*, 1981). Providing a theologico-legal resource for Catholic Church in the area of working children through an analysis of the Catholic social teachings, international legal instruments and the Nigerian national legal instruments remains a necessity. The aim of this research is to use Catholic social teaching to provide theologico-legal resource in the area of social justice for working children on which Catholic pastoral and institutional practices could be based. A detailed presentation and analysis of the contributions of Catholic social teaching to the welfare and protection of the rights of working children will be discussed further in chapters six and seven.

### **1.7 The Research focus**

All over the world, child labour is of great concern and the different conceptions of childhood at a given time and place affect its mode of operation (Fyfe, 1985). The differences in conceptions of childhood are as a result of the differing socio-economic backgrounds of children (Boyden, 1997; James *et al.*, 1998; Liebel, 2004; Boakye-Boaten, 2010). It means that the manner in which childhood and child labour are understood in developed countries differs from the way they are understood in developing countries, like Nigeria. The historical development of child labour and improvement on child rights legislation and enforcement at any given time and place are related. Hence, improvement of the rights of working children is affected by industrialization and social awareness (Horn, 1994; Olutayo, 1994; Seabrook, 2001). The attention given to working children is affected by the prevailing arguments on whether children should work or enjoy a labour-free childhood (Seabrook, 2001). A labour-free childhood is a luxury for developing countries in Africa, including

Nigeria. Education plays a vital role in the formation of children (McKechnie & Hobbs, 2001). More so, the Nigerian situation questions the place of education as a result of the lack of basic necessities of life to many of its citizens. In Nigeria, children are considered as assets in any manner they can be of help to their families, not excluding work. There is a problem when working children are not protected and a common understanding of what constitutes hazardous work is unclear in Nigeria (Okoli, 2009). There is an assumption that children are protected within the family but evidence has shown that the situation is not always true in Nigeria (Ibanga, 2007). Such conflicting and unclear conceptions of childhood and child labour require particular attention that would also address the situation in a theologically sensitive manner.

In Africa, past research has established that child labour is not to be understood in the sense that the United Nations *CRC* defines it (Gallinetti, 2010). The *CRC* conception of child labour and childhood is influenced by contexts that do not fully take into consideration the socio-political, religious, cultural and economic advancements and status of developing member states. As such, the fight against unjust and exploitative child labour does not mean the elimination of all types of work as performed by a child. Work could also be part of a child's socialization process, enabling the child to develop "a sense of personal worth, pride and accomplishment" (Uzodike, 1990:85; see also Okoli, 2009).

Besides, the formulation of programmes and policies regarding child labour are based on research carried out in the formal sector, whereas children in Nigeria generally work in informal sectors (Bonnet, 1993; Okoli, 2009; Uzodike, 1990).

Nigeria is not yet as industrialized as the Western nations and a good percentage of its economy is driven by the informal sector; domestic work, family business, and agriculture. Consequently, an exclusively legal appraisal of child labour in Nigeria would not relate sufficiently to the real life experiences of working children in Nigeria. The economic activities where children work are mostly not within the view of the legal monitors (Ibanga, 2007). As a result, child labour legislation becomes insufficient in promoting the protection of the rights of working children and protection from economic exploitation in South East Nigeria.

It has been argued that there is a certain disposition regarding consulting children on issues in Africa of which an “institutionalized silencing of children – the pervasive belief that children should be seen and not heard – is, perhaps, the most dangerous and damaging of all silences in Africa” (Ofodile, 2010:59). It becomes difficult to understand how children should be holders of human rights and simultaneously have limits to these rights. “This absence of consultation is not merely accidental, but goes to the very heart of adults’ views regarding childhood” (Kaine, 2009b:12). This research will not in any way give support to either the institutionalized silencing of children or promote the culture of non-consultation with children in issues that concern them.

Socio-legal and economic research on child labour in Nigeria is inadequate in solving the problems of child labour (Uzodike, 1990; Ndem, et al., 2012). Having an understanding of what work means to children in Nigeria especially within the informal sector gives a good footing to this research but it does not proffer solution as regards the protection of the rights of working children and safeguarding their



dignity (Okoli, 2009; Olutayo, 1994). The involvement of churches in the protection of working children and fight against exploitative child labour is to be reinforced.

Christianity has a strong influence on the population of South East Nigeria yet more needs to be done by the Catholic Church in Nigeria to improve the conditions of working children. This research seeks to demonstrate that the Catholic understanding of dignity and the divine image of the human person necessarily include the child. Catholic social teaching upholds the rights of the child (*CSDC, 2004*). A theological analysis of child labour legislation with Catholic social teaching will be beneficial in formulating a theologico-legal resource capable of informing the policies and practices of the Catholic agencies and encouraging them in the fight against the unjust exploitation of working children in South East Nigeria.

## **1. 8 Organization of the research**

Chapter two explores the impact that the religious, legal, socio-political and economic development of Britain had on the understanding of childhood and child labour between 1780 and 1850. The researcher argues that the conception and nature of childhood in more developed countries went through transformation in history as a result of the changes in the society. The transformation in British understanding of childhood between 1780 and 1850 affected the understanding of childhood and child labour practices. It argues that Nigeria like the 18<sup>th</sup> century Britain and other developing countries is not yet structurally ready to support international child's rights legislation such as the *CRC*.

Chapter three situates the research in its historical background to enable a greater and deeper understanding of the world of working children in Nigeria, especially in South East Nigeria. It evaluates child labour practices in Nigeria, describes the traditional meaning of work and causes of child labour. It establishes that child labour still thrives in Nigeria and argues that Nigeria like some other African countries has its unique understanding of childhood and child labour. Work is regarded as an integral part of life for every Nigerian child. By way of discouraging exploitative child labour, it discusses the dangers and consequences of child labour as this research is meant to protect the dignity and rights of working children.

Chapter four embarks on an exposition of the historical development of child's rights legislation at international, regional and national levels. It discusses the development of international standards of child rights, its further development at the African regional level and in Nigeria as a state member of the United Nations. It argues that child's rights legislation for the preservation of the rights of working children in South East Nigeria is insufficient. It critically argues that as a basic principle, the best interest of the child is paramount in the enforcement of child right legislation.<sup>14</sup> It briefly explores the implementation of child labour legislation in Nigeria insisting that any assistance from other agencies and establishments, including the Catholic Church at the local level towards a fuller realization of the children's working rights is urgent and relevant.

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<sup>14</sup> It is necessary to keep in mind the doctoral thesis of Fortune Ihua-Maduenyi on *Considering the Rights and Best Interests of a Child in a Multi-cultural Civil Society with Special Reference to Nigeria*, of the University of Leicester, 2008. The thesis claims that culture affects what constitutes best interests of the child and could therefore be seen as relative. This research acknowledges the veracity of his claims leaving a reference for those who may want to read further on the topic.

Chapter five explores the historical perspectives of the natural rights tradition in the Catholic Church. It explores briefly the contributions of the medieval canonists of the 12<sup>th</sup> century in the evolution of the natural rights tradition. It articulates the conflicts that ensued between the Catholic Church and modern understanding of rights and finally situates the current understanding of rights in the Catholic tradition. It argues that the natural rights tradition is important in the emergence of modern human rights. It maintains that the Catholic social teaching upholds the natural rights tradition, which recognizes rights based on human dignity and the human person as created in the image of God even as she speaks in the language of modern rights. This chapter insists that an understanding of children's rights within a God-centred natural rights tradition would be of benefit to understanding and acceptance of the rights of working children in South East Nigeria. In chapter five, the researcher argues that due to lack of complete acceptance of the whole body of human rights legislation by the Catholic Church, the need to render assistance towards the implementation of the rights of working children in an environment that values and respects Catholic ethos and practice, South East Nigeria is both essential and urgent.

Chapter six discusses the relevance of Catholic social teaching to the theological analysis of the rights of working children. It explores the extent Catholic social teaching made reference to working children. The main sources used in this chapter include Leo XIII's *Rerum Novarum* of 1891, Pius XI's *Quadragesimo Anno* of 1931, John XXIII's *Mater et Magistra* of 1961 and *Pacem in Terris* of 1963, John Paul II's *Laborem Exercens* of 1981, and other related Catholic social teaching documents. The Catholic Church holds some reservations on some human rights provisions. The study shows that the rights of working children are not adequately protected in the

principal documents of Catholic social teaching. This necessitates the need to adopt and adapt the provisions of *Laborem Exercens*, a modern encyclical on human work to protect the rights and dignity of working children as will be dealt with in the next chapter.

There is a further study of *Laborem Exercens* the main document for this research in chapter seven. It investigates the various aspects of the document that could be of relevance to working children and the work they do. It discusses the work-related themes in the document, such as work in general, aspects of work, conflicts between labour and capital, the rights of workers, and the spirituality of human work. It reflects on the relevance of *Laborem Exercens* to working children in South East Nigeria. It thence, draws from the encyclical, *Laborem Exercens* the values that embellish the existing child's rights legislation regarding working children in Nigeria, especially in South East Nigeria.

Chapter eight is the final chapter. It deals with the justification of the thesis statement, recommendations and conclusion. It argues, through a brief summary of each chapter, how the chapters are connected in the argument leading to the formation of a theologico-legal resource for the protection of the rights of working children in South East Nigeria. The researcher is aware that no matter how perfect the formulation of child's rights legislation is, it is not an end in itself. Child's rights legislation is meant to achieve practical and life-changing results for working children. As its main contribution to knowledge and to contribute to the greater realization of child labour legislation, the researcher proposes a theologico-legal resource through the analysis of child's rights legislation within the God-centred

natural rights tradition upheld by the Catholic social teaching. The chapter points out other complementary research areas that could contribute to the fuller realization of a good practice of child labour in South East Nigeria and familiar contexts all over the world.

## **CHAPTER 2**

### **CHILD LABOUR IN BRITAIN AND THE UNIVERSALISATION OF CHILDHOOD**

#### **2.1 Introduction**

The debate surrounding rights of the child, the fight against exploitative child labour, the formulation of international, regional and national treaties across the globe on child rights issues and related policies are all based on a certain understanding of childhood. There are conflicting concepts of childhood, which challenges the relevance of the *CRC* and other international treaties on the child. The social, cultural, political and economic frameworks of developed nations influenced the *CRC* and other international treaties. To ensure the availability of an efficient legal instrument for securing the rights of children, there is a need to have a profound understanding of “the ideologies, symbols, and meanings that lie behind notions of children’s rights and childhood” (Kaime, 2009b:11). The researcher uses various instances to argue that a contextualized understanding of childhood in South East Nigeria would necessarily require a contextualized child labour resource for promoting dignified work for children and preservation of their rights as workers.

The researcher argues that the conception and nature of childhood in more developed countries went through transformation in history as a result of the changes in the society. The transformation in British understanding of childhood between 1780 and 1850 will be used to buttress this line of thought. In analysing the religious, socio-political and economic climate between 1780 and 1850 in Britain, the researcher argues that it affected the understanding of childhood and child labour practices. It

argues that Nigeria, like the 18<sup>th</sup> century Britain, lacks the necessary infrastructure that would support the implementation of international child labour legislation such as, the *CRC*.

Despite the colonial impact on African soil including Nigeria, many African countries at this stage are not yet able to support a Western concept of childhood and child labour. There is an incomplete transition of the image of the African child due to the fact that colonial impact on the conception of childhood did not guarantee a developed context. The contemporary understanding of childhood in developed nations is based on their contemporary culture that has improved social welfare system and developed infrastructures. In developing countries like Nigeria, the international child labour legislation, *CRC*, would need support in order to bridge the gap owing to structural ineptitude in developing nations. A developing member state of the United Nations such as Nigeria, is to be understood in its own terms. It has been stated earlier that human rights legislation, including child's rights legislation in relation to working children is not an end in itself but a means to achieving the desired goal. In the case of child's labour legislation, its goals are to secure the rights of working children and ensure a dignified status for working children and the work they do. Consequently, this research proposes to support the human rights legislation on working children through the analysis of child labour legislation with Catholic social teaching. The next section briefly explores the understanding of childhood in Britain 1780 to 1850 and how it influenced the understanding of child labour practices.

## **2.2 Childhood and child Labour in Britain 1780 to 1850**

Certain times in the history of a nation and its stages of development play a significant role in the understanding of childhood and child work. Various times in history for different nations and people result in diverse and sometimes conflicting images of childhood and child work. This could spell inequality in opportunities available for children globally. Research in sociology and social anthropology suggest that “the different competencies and incapacities perceived to be associated with childhood in different societies are numerous and often imply contradictory conceptions of the child” (Boyden, 1997:203). A brief presentation of the ideologies that informed the different conceptions of childhood and child labour in England between 1780 and 1850 will enable us to see the impact of time and development on the varying conceptions of childhood and child labour.

At the end of the eighteenth century in England, there was a prominent philosophy based on the belief that the human person has a strong inclination to sin, and youthfulness should therefore be controlled to enable the inculcation of beliefs and values. This belief informed the attitude towards children during the period. There was

a belief in the innate sinfulness of all humanity and the consequent need to curb and control youthful high spirits. Habits of industry must be inculcated since “idleness” was equated with moral weakness, and each child had to be trained so as to ensure that the correct values and beliefs were absorbed...This not only encouraged acceptance of child labour in agriculture, mining, manufacture and, especially for girls, in domestic service but it encouraged the promotion of schools of industry and similar educational institutions in the last decade of the eighteenth century.

(Horn, 1994:1).



This understanding resulted in the elites of the society resorting to “drudging memory work” and “culture of the mind” while the lower classes made their children keep busy with work, with or without financial benefits (Horn, 1994:1). In England at this time, there was growth of schools that encouraged industry and by 1803 there were about 21,000 children that attended such schools. Apart from the schools that promoted industry, from the 1780s, there arose also the growth of Sunday schools which were used as vehicles for instilling faith, morality and discipline at a cheap price among young people permitting them at the same time to carry out their weekday work as scheduled. Sunday schools prevented young people from engaging in “idleness and wrongdoing” on their once a week leisure day (Horn, 1994:2). In Gloucester by 1811, working class children between the ages of five to fifteen attended the Sunday schools.

In addition, between 1780 and 1850 in England, following a philosophy that children should be assisted to remain at their status in life, children were put to work. It was so much held as a principle and a practice that children were taken from school to go to the farms. They were encouraged to work in farms so that they will remain farmers in life. The society then dreaded everybody been educated (Horn, 1994). Child labour was encouraged. For example, Horrell & Humphries (1999) reflecting on child labour in the 18<sup>th</sup> century England reports that “Children worked from an early age in eighteenth-century England and for long hours at monotonous tasks. Lacemakers’ offspring were taught to handle bobbins at age four, and older children would work a 12 – 15 hour a day” (Horrell & Humphries, 1999:78).

Further in the late 18<sup>th</sup> century England, following the impact of the philosophies of English Romantic poets and French philosopher Jean-Jacques Rousseau, there was a change in the philosophy of children from “moral Puritanism” to seeing children as obviously innocent and good (Horn, 1994:3). Consequently, childhood began to be seen as a distinct stage from adulthood, unlike the earlier conception that made children small adults that should be put to work. This new conception gave support to the reformers who were fighting for the wellbeing of children. As a result of the evangelical religious opinion, which started in the early 19<sup>th</sup> century, this conception of childhood was lost. “In the revival of evangelical religious opinion in the early nineteenth century, it was the older belief in the need to control children’s natural wilfulness and to train them in the way they should go which predominated” (Horn, 1994:3). Throughout this period, children under the age of 14 were under the absolute control of their parents and as such were not considered to have individual rights. There were relegated to the background of the society. “In that way an orderly family life was promoted, contributing it was hoped, to harmony in society at large” (Horn, 1994: 3-4). As time elapsed this structural set up that maintains societal peace failed because parents neglected their roles or there was no one to play the role of a guide or mentor at all as a result of children who were orphaned. Consequently, the state gradually became involved in providing protective guidelines for children and the supervision of adults regarding domestic issues. Though there was still a certain disposition that the state should not be involved in domestic issues.

However, many industrial units in London in the 1850s were workshops rather than factories. As a result, many children within the capital city did more of “casual or ‘sweated’ occupations, like box-making, artificial flower-making, sewing, running

errands, and street vending, often alongside parents or older siblings” (Horn, 1994:6). It was later with the introduction of machinery that the exploitation of children increased in scale and intensity (Horn, 1994). However, it has been argued that industrial revolution did not increase child labour. “Perhaps contemporary outrage occurred not because factory labour was worse but because it was more visible” (Horrell & Humphries, 1999:79). Though largely determined by individual family situations, the male child was more likely to engage in seeking for job outside the family than the female child. Children that had lost their fathers were more likely to embrace the job market at an early stage.

The age at which children entered the labour market also varied from industry to industry, and even from district to district within the same industry. In the early 1840s it was common for children in the South Staffordshire coalfield to go underground when they were 7 years of age and in general when they were 9. But in North Staffordshire, the competing work opportunities in the potteries kept many from the mines until they were about 13.

(Horn, 1994:8).

Working children readily supported their families financially and have some money kept for their personal use. Many of the working children were still living with their parents because they were not able to cater for themselves.

### **2.2.1 Traditional employment and child labour in England**

There is a tendency to presume that work is as old as humanity and that children have always worked. Lavalette, (1998) avers: “It is often said that children have always worked. This is almost certainly true. However, such claims can lead us to oversimplify; to amalgamate a series of experiences of child work that are quite different and to ignore the range of contexts within which that activity takes place”

(Lavalette, 1998:22). There was a great difference between traditional employment and industrial work between 1780 -1850s. Evidently,

many children in these “traditional” occupations throughout the period worked in a domestic situation, under the eye of family and kin or, in the case of servants, under the direction of an employer who exerted close personal control. Work routines could be arduous but they were also flexible, both in content and duration. Unlike in factories, where a strict timetable was imposed and fines were levied for unpunctuality, in these industries the notion of time was “task-oriented.”

(Horn, 1994:12).

At the level of traditional agricultural setting, children within the age of six or seven carried out some minor duties and contributed to family finances. The boys carried out duties like chasing birds away from the corn fields, picking stones, looking after livestock, assisting adults, gathering wood, bringing acorns for pigs and picking wild fruits. The girls were more inclined to domestic work like child minding and assisting their mothers in family chores. This allowed the girls some leisure and time to play (Horn, 1994). In some instances, like in husbandry apprenticeship, the work was more tasking and did not allow for leisure and play.

In the late eighteenth century, the welfare of the boys recruited to sweep the chimney became of great interest. “Many were young paupers apprenticed by the parish authorities; others were sold to the sweeps by their parents for a few pounds” (Horn, 1994:16). Smaller children were used more since they were able to pass through the narrow and crooked passages of the chimney in the houses of the rich. It was a great exploitation of children coupled with the maltreatment from their employers. They slept in untidy environment and were not allowed to bathe more than once a week and this had many consequences for their future and wellbeing (Horn, 1994).

Some children from poor families in the villages within the late eighteenth and early nineteenth centuries rarely had the opportunity of having a wage work. “Whatever the truth about trends in the late eighteenth and early nineteenth centuries, by the 1840s child labour appears to have been in decline, a decline coincident with campaigns for restriction and laws curtailing the employment of children in factories and mines (Horrell & Humphries, 1999:78). There was still need for child employment in some domestic crafts such as hosiery, pillow lacemaking, shoe making and glove making in the first half of the nineteenth century. Such crafts were learnt from their mothers or from crafts schools popular at the time. In 1835, Newport Pagnell in Buckinghamshire recorded fifteen such schools that only instilled skills for the crafts while academic instruction was not really given. In such schools,

Academic instruction was negligible and few of the pupils could read and write. Most adopted an awkward bent posture as they worked at the pillows on which the lace was made, and those who did not progress as quickly as required were punished, sometimes by beatings. The intricate nature of the work caused eyestrain, especially during the dark winter months.

(Horn, 1994: 14).

In East Anglia, children were greatly exploited through the use of the gang master system. It was a system that pays the gang master depending on the amount of labour he was able to extract from the workers. A great number of the children were within thirteen years old. They had to walk long distances and work under strenuous conditions only to be paid so little at the end. Children between the ages of 4 and 5 worked in the 1820s at Acre, Castle and Norfolk where the public gang master system was in operation. Parents were compelled by poverty and the need to prepare their children for future not to relent in sending them to such works. In the large new farms, children engaged in works such as weeding, root gathering and stone picking

“despite the adverse effects on their health and education – and sometimes their morals...” (Horn, 1994:15). With a certain degree of ambivalence regarding the conditions of working children, it is suggested that “From the early nineteenth century reformers were calling for some regulation of children’s work in factories. While wanting the worst excesses curtailed, they did not propose to ban child labour, believing it essential to poor families (Horrell & Humphries, 1999:78). At this time, the contribution of working children is regarded as essential. As such, not all types of work should be banned. The fight against exploitative child labour should not be understood as a prohibition of all work done by children.

### **2.2.2 Industrialisation and child labour in England**

Lavalette, (1998) identifies two groups engaged in debate on child work regarding the “social consequences of industrial revolution” and development in modern society namely the optimists and the pessimists (Lavalette, 1998:22). The optimists like Ivy Pinchbeck argue that although children were forced to work long hours in hazardous conditions before the industrial revolution, it was the industrial revolution that exposed the evils of child labour and provoked government attention through legislation. The optimists argued further that prior to industrial revolution similar exploitative child labour practices occurred. The British government fought against child labour as “immoral and grossly exploitative” (Lavalette, 1998:22). However, the pessimist like E P Thompson roundly condemned child labour as one of the worst

practices of the nineteenth century. Comparing the proto-industrial<sup>15</sup> and industrial revolution periods in England, Lavalette (1998:25) argues that:

the exploitation of child labour became more intensive with the spread of competitive market relations and the commodification of labour. In the proto-industrial period, families were forced to work long hours, in terrible conditions, for little reward. To increase family income all family members, including very young children, were forced to work. There is little doubt that children were treated harshly under this system but the family's control over the production process, though not over access to market, offered some potential respite. It was precisely the loss of control over the production process and the separation of home and work that ushered in the intensification of child labour exploitation that was witnessed in the factories, mills and mines during the industrial revolution.

(Lavalette, 1998:25).

It is evident therefore that working children were not always protected while working with family members. Industrialization may not have only increased exploitation of working children but also brought it out to public view and reaction. With the advent of the factory system in textile production and the use of mass production in spinning and weaving in the 1770s and 1780s, working children moved their labour to the factory. The first spinning mills were powered by the streams and looked more like workhouses and unfit as a place of employment. Local people were not attracted to the job. The employers had to import workers from other places.

Children were considered particularly suitable in this regard, since they were cheap and tractable and their nimble fingers could perform many of the simple processes required....In other cases youngsters were imported from townhouses and orphanages and were "apprenticed" in the mills, usually until the age of 21. The Poor Law authorities, particularly in parts of London and

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<sup>15</sup> The term "proto-industrialisation" is used to designate "the growth and increasing influence of an integrated market system in the 100 years prior to the "take-off" of the industrial revolution in Britain (circa 1780). This period saw the development of more complex trading patterns and arrangements and the increasing privatisation of the means of production in the hands of capitalists and merchants, who also increased their control over access to the market. The labour process, however, by and large remained under the control of the direct producer" (Lavalette, 1998:23).

other populous centres, were glad to be rid of the cost of maintaining increasing numbers of orphaned and abandoned children.

(Horn, 1994:19).

A study mainly concerned with health of working children within the industrial labour market decries the health conditions of working children as a result of work and environmental condition of the time due to technical innovations and poor sanitation. Kirby (2013) avers that:

Almost every aspect of the health of late eighteenth and early nineteenth century child workers was affected by the unprecedented urban and industrial growth of the period...Technical innovations also brought new and heavy industrial machinery which changed fundamentally the types of operations required in industrial jobs and resulted in new and more violent forms of industrial injury... the overcrowding and poor sanitation which accompanied the growth of manufacturing centres meant that higher industrial wages did not normally translate into better health for urban families.

(Kirby, 2013: 36).

The impact of industrialization between 1780 and 1850 led to changes in what children were allowed to do. Unlike the domestic system which allowed the child time to do other things like school and leisure, and a gradual introduction into the labour market depending on the child's "capabilities and age", the industrial revolution came with a lot of challenges (Horn, 1994:18). This change came about during the 1800s as a result of the need for handloom weavers to put in more hours at work in order to maintain their wages.

Apprenticeship of poor children was considered a common practice since the sixteenth century but some changes emerged during the Industrial Revolution regarding the scale and the distances to be allowed. Parishes readily helped to recruit children in their numbers to work in textile industries for the first twenty years of



industrial revolution. Children were preferable because it was an easy way to increase the labour force. It afforded the employers a cheap housing budget, using cheap hostels to accommodate more children instead of expensive cottages. It was preferable also because of the advantage of catering for the child worker alone instead of an adult worker who would need an added care for their dependents (Horn, 1994).

Child labour during the industrial revolution (1780-1850) differs from place to place due to uneven development and various methods or means of production used in different places. The difference between the exploitation of children in industrial revolution era was that “in the burgeoning factories the children were utilised as individual workers, the pace and intensity of their labour determined by machines and regulated by overseers, with little account taken of their development needs as children” (Lavalette, 1998:25-6). For example, children suffered in these factories where they worked long hours, sometimes up to 12 or 14 hours in a day. Some children worked in spinning mills that worked for 24 hours, and so had less sleep. Some were exposed to dangerous machines and crushing of hands or fingers was common. Some developed one disease or another as a result of bad weather such as chest infection, lung infection, stomach upset, eye infections and deformed legs because of long hours of standing. Some children who worked in the factories were not able to attend school (Horn, 1994).

Nevertheless, it is true that health of working children was adversely affected by the unsuitable working conditions of the industrial child and also by:

wide range of exogenous factors such as the urban disease environment, social class, household poverty, pre-existing disability or orphanage, and such

influences almost certainly proved more harmful to their health and welfare than discrete workplace factors. This is not to say that the early industrial work was not harmful.

(Kirby, 2013: 151).

Hence, Kirby, (2013) argues that the health of working children was subject to many other non-work related factors. In developing countries like Nigeria, the exploitation of working children is also complicated by unhealthy environment, lack of social amenities and other non-work related factors.

Having seen how working children fared during the Industrial Revolution, one wonders if there was no response from the British government. Obviously, the government responded to child labour conditions during this time. The next section will briefly explore how child labour legislations were used to regulate the impact of child labour in Britain during the Industrial Revolution and thereafter.

### **2.2.3 Government reforms of child labour legislations from 1788 to 1867**

Before the intervention of the state on child labour, there were already restrictions imposed by lack of adequate work for children in some industries, parents' decision regarding child labour and some other economic factors that militated against it. In 1788, the first legislation was issued specifying 8 as a minimum age for apprenticeship and further stipulated that the climbing boys should be allowed to bathe at least once a week, go to church on the Sabbath and not be forced to climb the chimney that is on fire. Gradually, the adverse affects of exploitative child labour on child workers and apprenticeship led to reformation Act 1816 that made it an offence for any parish to send a child on apprenticeship beyond 40 miles distance. Later, the Health and Moral Act restricted child workers from night work and

working beyond 12 hours in a day. Employers were also charged to ensure that some form of formal education was given to working children and to allow them to attend Sunday school for their religious wellbeing. It was from the 1820s that the campaign to regulate the working hours of children increased in order to allow children engage in some playful activities and be able to attend school as well (Horn, 1994). However,

The generation of child labourers who worked through the half-century found their employment in mines, agriculture (possibly as gang labour), the informal economy, which by 1830s was creating new types of low-paid casual work for which children were adjudged especially suitable, and, to some extent, trades.

(Horrell & Humphries, 1999:87).

This means that even as factory Acts seem to fight against child labour, the informal sector of the economy sabotaged the implementation of child labour legislation in the industrial revolution era.

In 1833, for instance, the Factory Act prohibited children less than 9 years from working but this comprised only 0.03 % of the total number of child workers in the cotton factory and 2.7 % of child workers in the silk factory. The legislation however did not affect the lace and silk factories where child labourers were greatly used in large scale (Horn, 1994). The Act was amended in 1834 increasing the minimum age for apprenticeship to 10 and later in 1840 only boys from 16 years were allowed by a new Act to be apprenticed and disallowed those less than 21 years from climbing the chimneys. In 1833 and 1844 Acts, there were regulations for youngsters in textile factories but these regulations were later applied in other industries. However, it was observed that:

After 1840, the proportion of working children employed in factories declined; there may even have been a slight fall in absolute numbers. If this is an effect of the Factory Acts, it has to be understood as redistributing child

workers. Apparently legislation did little to alter the proportion of children in families who worked, or attitudes to children's work per se in the two decades following its implementation. Children displaced from factories had to find employment elsewhere.

(Horrell & Humphries, 1999:86-87).

The labour legislation was not totally embraced by factory owners as some tried to commit some illegalities to cut corners. Even some parents whose children have not reached the official age to work kicked against it. There were lots of fraudulent actions to break the law by parents and factory owners for their own benefits. Some parents and factory owners were involved in claiming false ages for working children, using cheap teachers, regimented works, and the magistrates who were supposed to enforce the law were slow in imposing penalties. There were lots of reactions to the new law and this affected its enforcement (Horn, 1994).

Creighton (2013) in his analysis of the changing conceptions of children's rights in early industrial Britain under the age of 14 holds that:

The debates of the 1830s and 1840s concerning the labour of children employed in textile factories constituted one of the most sustained and wide-ranging examinations in nineteenth-century Britain of the rights of children and the nature of childhood. They gave rise to Acts of Parliament limiting hours of labour, thus making the first significant encroachments upon the hallowed principles of economic laissez-faire.

(Creighton, 2013:231).

The debates within this period on child labour led to the extension of certain rights of childhood to the children of the working classes. It was the Ten Hours Movement from the north that initiated the long years of campaign for the betterment of the conditions of working children. The class conflict in the late 1830s and early 1840s and the economic depression of the period contributed in making the needed change

on the welfare of working children urgent. As a result of this and more, concessions were given and having reduced the demands of the movement upholds that working children deserve certain rights. In fact, the enactment of legislation gave these rights for working children their initial institutional support and new social status (Creighton, 2013).

Another legislation, the Act of 1853 forbade children to work before 6 a. m. or after 6 p. m. on weekdays and after 2 p.m. on Saturdays under normal circumstances. From this time on, children from poor homes were enabled to combine school with the introduction of half-day session. The half-time system later was seen as a big problem as some pupils were already tired having been to work, dressed shabbily and exhibited some unwholesome attitudes that affected the regular students. In the 1870s half-time schooling was seen as a “rescue” strategy than as a way of making child labour a legitimate practice. The 1867 Workshops Regulation Act was enacted for smaller factories employing less than 50 people; such as, cottage industries that engage in straw-plaiting and gloving. The local sanitary authorities were charged with its enforcement and this was so difficult to achieve. Some of the cottage factories were in hidden places and even the owners who did not want to go through the rigors of registration chose to do away with child labour totally. In 1874, the minimum age of employment was raised to 10 in textile mills and was later spread to other factories and industries in the 1878 Factory Act. This latter Act also prohibited children from working in hazardous environment that could be detrimental to their health, such as melting factories (Horn, 1994).

Having explored the unfolding of legislation on child labour this far, it is suggested that the child labour legislation advancement enabled development of social policies within the last quarter of the nineteenth century. It should be noted that the researcher has not explored all child labour legislation within this period. Some Acts and legislations are used illustratively to argue that child labour legislation played a role in the fight against exploitative child labour in Britain. It could be argued that:

The main importance of the factory reform movement was, nevertheless, the way in which it gradually encouraged society to accept that the State had a responsibility to prescribe minimum conditions of existence for the most vulnerable sectors of the population. In that way it inspired the growth of collectivist social policies during the last quarter of the nineteenth century over a wide sphere.

(Horn, 1994:45).

Before government involvement in the affairs of working children through the enactment of reform Acts, factory owners, orphanages, London parishes, families and others involved in trafficking of children for child labour exercised a wide range of freedom in their operations. However, with the government reform Acts regarding child labour practices in place, a collective way of fighting exploitative child labour through social policies evolved.

More so, with the rising concern regarding children working in factories in the middle decades of the nineteenth century, there was a special interest on poor children that lived on the streets, as their families could not support them. Some reformers were engaged in helping the destitute children with their different intentions associated with religion, self-interest and humanitarian goals.

From the foregoing, it is evident that a gradual lengthening of childhood and the minimum age for employment was 8 in 1840s and it increased to 10 in 1870 and 13 was seen as the end of childhood officially. From the 1870s some jobs were conceived as hazardous for children and therefore did not suit their physical and mental capacities. Children were also seen as not having a strong bargaining power regarding their employment conditions. Henceforth, childhood was treated as distinctive and therefore protected through legislation.

In the late eighteenth century, childhood of the poor was seen as a preparatory stage for adult world of work. From the nineteenth century, childhood took a new meaning. Play and leisure became part of childhood. The individual child was greatly valued as families reduced in size between 1860s and 1870s. Discipline at workplaces and in the families became less severe unlike during the early nineteenth century. Parents, however, continued to play the primary role of instilling morals on children and maintaining order in the home. The legislation of 1889 prohibited parents and other adults from maltreating children making corporal punishment less fashionable, though young delinquents were still managed within the confines of Reformatory and Industrial Schools in 1850s for fear of total moral breakdown. The half-time system was employed to protect children from working long hours but later seemed to promote and institutionalize child labour. The half-term system reduced the chances of children going to school. The number of casual child workers also increased and this had adverse effect on their health and welfare.

Kirby analysing the condition of working children in the early nineteenth century, avers that:

Child labour laws also frequently compounded the problems of family poverty that gave rise to child labour. The most common reaction amongst employers to the introduction of age regulation was to dismiss all the young children who fell within the new restrictions. Since laws prohibiting children from labour never contained provisions to compensate poor families for the loss of their children's incomes, the child worker excluded from regulated factory jobs might simply be transferred to more hazardous and often lower-paid unregulated trades.

(Kirby, 2013: 160).

Owing to the above scenario regarding the welfare of children, various social surveys were conducted in the 1880s and 1890s in London and York. The results of the surveys confirmed the imperialists' fear on the increasing military competition with foreign countries at the time, like Germany. The survey reports advised that for Britain to retain its position as a world power, improved standard of living for children was an imperative.

In this context concern to improve not only educational standards but also the physical welfare of children seemed a sensible precaution, since they were to be the future protectors of the Empire. It would be impossible to defend itself properly if it had to rely on the "rickety shoulders" of so many existing elementary pupils, born and bred in the unhealthy atmosphere of big cities like London, Manchester, Birmingham and Liverpool.

(Horn, 1994:70).

This awareness also affected the renewed emphasis on proper home training for future mothers. The girls were trained on domestic subjects in school such as cookery and sewing. Lavalette (1998) confirms that in the last quarter of the nineteenth century, there was a shift to "out-of-school" work which allowed children to combine work with schooling. This shift was as a result of many reasons ranging from economic changes to the concern that unregulated work was adversely affecting children – "important national asset", the future workers and parents (Lavalette, 1998:38). He argues that:



Schooling was promoted to educate future workers and better enable Britain to compete with Germany and the US, to control unemployed children in inner city areas and to “socialise” children to the virtues of British society and Empire. By early years of the twentieth century child labour was viewed as a decreasing problem and increasingly viewed as a healthy and beneficial pastime. It set in stream a way of thinking about child workers which remains dominant today.

(Lavalette, 1998:38).

Britain did not employ only child labour legislation in the fight against exploitative child labour. Other factors such as, compulsory education of children was taken into consideration. It has been asserted that “Protective labour legislation played only a minor role in the eventual withdrawal of children from paid employment and was probably more important in redistributing children than in stopping their work. (Horrell & Humphries, 1999:99).

This means that legislation alone without an improved social welfare system will be less effective in fighting exploitative child labour. There are a number of reasons that led to the fall in the number of working children in the nineteenth century. Some working class parents and families earn enough money that not only increased their living standards but were also able to invest in their children’s education. As a result, children were put to learning and out of child labour, to enable them have a brighter future and better jobs later in life. It is also argued that increase in wages does not always result in decline in child labour. For some others, it was as a result of legislation and enforcement by the state. Compulsory education also contributed to the decrease of child labour (Lavalette, 1998). Consequently, the researcher argues that the changes in the family and social structure led to decline in child labour.

In summary, this sub-section affirms that due to the different situations and circumstances in the societal structures coupled with varying competencies, unequal

opportunities exist among children from different socio-political contexts all over the world (Boyden, 1997). Buttressing this fact with the various trends of thought beginning from the late eighteenth century, it could be seen that a certain understanding of children as prone to moral laxity was the force behind child labour. They were kept busy with work on weekdays and went to Sunday school so as to imbibe sound moral values. Children were also sent to work making poor families remain at their levels so as to ensure that the country had workers for food production (Horn, 1994). In the late 18<sup>th</sup> century, children were regarded as innocent and upright. With religious revival of the time, children were placed under strict parental control.

It is notable that traditional work was different from factory work. The introduction of craft schools with less emphasis on academic lessons encouraged the early involvement of children in the labour market. In the 1820s in East Anglia, gang masters were used in exploiting working women and children. Children as young as four and five years old worked in farms and this adversely affected their health, morals, education and future. Apprenticeship as a form of child labour was a common practice and even parishes were involved in recruiting poor children in their numbers. Poor orphans were also apprenticed. Between 1802 and 1811, about 2000 children were sent to the textile factories with the help of London parishes. Children of about eight years of age were exposed to the risk of climbing and sweeping the chimney. They lived in dirty and unhealthy environment.

The Industrial Revolution brought some changes in labour demand. The number of children involved in factories reduced as a result of demand. There was a decrease in

the number of apprentice during the Industrial Revolution, as work and operation of machines required less skill. Government intervention through legislation also reduced children's involvement at work. The issuance of different Acts by the government reduced child labour. Legislation against child labour was, however, not totally accepted. The introduction of half time school of three hours or two and half hours was not good enough in discouraging child labour, instead it seemed to have promoted it. The Reformers, for example, were involved in helping working children. There was a lengthening of childhood age from eight years in the 1840s to ten years in 1870. Some jobs began to be seen as risky for children. In the late 18<sup>th</sup> century, childhood was seen as a period for preparing for adult life. In the 19<sup>th</sup> century, childhood was seen and admired in its own term as having its dynamics. As family size decreased children began to be accorded more value. Maltreatment and corporal punishment of children stopped with the legislation of 1889. Reformatory and Industrial schools were used to check moral breakdown in the society. It was precisely the firm desire by Britain to retain its position as world power that made the government to improve the welfare packages for children since they were to be the future of the country (Horn, 1994; see also Lavalette, 1998).

### **2.3 Image of working children from the 20<sup>th</sup> century in developed and developing countries**

In 20<sup>th</sup> century Britain, the image of childhood promoted by adults did not tolerate labour. Yet, with this conception of childhood a notable number of children were unhappy and unfulfilled. Children suffered various forms of exploitation and

injustice from individuals and governments.<sup>16</sup> The work-free childhood in developed countries made children seemingly worthless economically. This notwithstanding, children are much cherished in terms of emotional and psychological value (Boyden, 1997).

At the beginning of child labour as a social problem in capitalist Europe and America over a century and half ago, the fight against unjust child labour started and swallowed up the concept of child work so much so that working children were no longer regarded with honour. As a result of this:

Working children as a social category have paradoxically lost their profile and disappeared as actors on the world stage. Reference was no longer made to working children, only to child labour. Until quite recently, working children were perceived at best as pitiable, helpless victims, or even as an embarrassing blot on landscape, and were accounted relics of a bygone age.

(Liebel, 2004:1).

Liebel (2004) claims that it would be difficult to properly understand children's work in developing countries unless the peculiarities of the working conditions of children

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<sup>16</sup> Children all over the world experienced at this period some inhuman activities from individuals and governments that were meant to protect them leading to deprivation of childhood: "International media coverage of the young paints an especially stark picture, of innocent and vulnerable child victims of adult violence and maltreatment; of 'stolen' childhoods in refugee camps and war zones. The widespread trafficking and sexual exploitation of minors in Thailand and the Philippines, the physical and emotional abuse of children in Europe and United States and the bondage of young labourers in India are now all clearly documented. But children have also endured serious crimes committed by their governments, as in Argentina under the military regime when an unknown number were abducted by the security forces and subsequently disappeared. In South Africa and Namibia black school pupils have experienced repression and detention and in Iraq, Kurdish children have been victims of genocide" (Boyden, 1997:191). Note also that Boyden (1997) uses the term "North" to describe the industrialized and developed countries while "South" describes developing countries of the South excluding countries like Japan and Australia.

are taken into consideration. Children in developing countries worked for different reasons including though not limited to the following; for personal gains, to support the family financially, establish their relevance, gain knowledge that was not offered by formal education, prepare for adult life, create opportunity for social life, improve self-confidence and social status. It is more the conditions of work and not work itself that causes problem for children in developing countries. Working children would not want adults to stop them from work just because they are children while their families suffer in poverty.

Children of poor and rich families in the developed societies like Europe and America also work. There are concerns regarding the effects of combining paid jobs with education by children in developed countries. Children in developed countries do not see their work as forced but done out of freewill in order to contribute to their families or the society. Working children in developed societies value their work for particular reasons, such as; enhances their self-esteem, also see it as offering them learning opportunities and as an avenue to acquire some free cash (Liebel, 2004). It is quite interesting to note that children from developed countries see their work in a special way.

Children's work in Germany, as in other Northern countries, is considerably different from that of the countries of the South. As a rule, it is not undertaken to ensure survival, nor does it endanger or put strain on the children to the same extent.

(Liebel, 2004:4).

A balanced conception of children's work should not emphasize only the risks, burdens and challenges of work but should also present the positive aspects of work.

This disposition needs to be corrected in order to avoid making child work an offence or despicable. This will promote the idea that children could help to transform their environment in some measure. Children are expected to do their best in sports and school works and are rewarded with certificates, grades and laurels. Discussions on child work seem to forget that it is the same “performance” that children are expected to do while working, just to do their best. This is not the situation, however, as children’s work is currently seen as being “backward, something that robs children of their childhood and in addition damages economy” (Liebel, 2004:5). There is limited awareness that children’s work, which infringes on their dignity and health are not as a consequence of “cultural backwardness”. It is suggested, rather that the dignity of working children, their health and future has been adversely affected

by the capitalist globalization, whether because of an increasing proportion of humanity is being plunged into hopeless poverty, or because the flexible and cheap labour potential of children helps them at least to gain a small advantage in the increasingly tough competition on the world markets.

(Liebel, 2004: 5-6).

Children work as a result of their different situations in life and could be as a response to their life peculiar challenges but the globalization of ideas and principles had neglected this aspect of reality. When children in the developing economy argue for a “right to work” as a result of their peculiar situation, it could be seen by those who “can only imagine ‘proper’ childhood without work” as a form of “capitalist exploitation” (Liebel, 2004:6).

By way of summary, one could aver that the adult perception of childhood from the 20<sup>th</sup> century Britain and other developed countries does not consider work as part of

it. The same children who were being protected by not considering them as part of the work force suffer a number of inhuman activities that rob them of their childhood from individual persons and governments all over the world (Boyden, 1997). In the wake of the fight against unjust child labour in Europe, the idea of child work was forgotten and seen as a thing of the past. The creative importance of work was overlooked and child work was viewed as hazardous and harmful. Children work for different reasons and this is conditioned by their situations and given opportunities. There are peculiarities in the conditions of children in developing and developed countries. Children from developing countries are generally not against work but the conditions of work. The same performance needed in classroom work is what may be required of children in certain forms of work (Leibel, 2004). Children provide cheap labour to the capitalist market. The debate concerning childhood and work in developed and developing countries continues. This research is partly meant to correct the manner of thinking about working children and all the work they do as capitalist or economic exploitation and therefore roundly unacceptable. The researcher argues that work has a place in the life of children and aims to work out a theologico-legal resource that would protect the rights of working children in South East Nigeria and in similar contexts.

#### **2.4 The place of education vis-à-vis child labour and child workers**

In Nigeria, survey results indicate that out of a total of 3,242,669 working children that attend school, 88.5% reported that their work did not adversely affect their academic performance while a smaller 11.5% indicated that work affected their academic performance. Among this number of working children were 88.5 % male

and 88.5% female that reported that their work did not adversely affect their academic performance. Similarly, 88.7% in the urban and 88.5% of children in the rural areas reported that their work did not adversely affect their school performance (FOS, 2001). However, Oloko (2003) observes that educational status of parents determines the involvement of their children in exploitative work. She suggests that:

illiterate and semi-illiterate persons whose experience of schooling is limited, tend to plunge children into work without sufficient regard for their student role whilst relatively more educated parents either provide remedial lessons for their working children or protected them entirely from work. Highly educated parents tended to employ young domestics but kept their own children from premature work thus facilitating their future social nobility.

(Oloko, 2003:41).

There is an on-going debate that compulsory education will eradicate child labour. Some argue that education is necessary but is not the only condition needed to eradicate child labour (ILO, 2004). Lavalette (1998) argues against the stance that child labour was stopped in developed countries like Britain as a result of compulsory education. He insists that it may be due to change of the nature of employment from full time to part-time and not necessarily the eradication of employment. Earlier in this chapter, Horn (1994) demonstrated that there were various factors that led to the eradication of child labour through legislation and other policies in Britain before the 20<sup>th</sup> century.

Exploring further into the available views regarding children employment and education, McKechnie and Hobbs (2001: 9-10) set out three views held by different schools of thought. The first view holds that employment combined with schooling is “a positive experience” for children since it is relevant for preparing them for adult



life. The second view might be termed “benign” since it upholds that children are to be employed hoping that exploitation of children will be controlled by legislation. However, some have argued that legislation is not adequately enforced and therefore ineffective. Thirdly, education is seen as the “central task for children” and should not be combined with work.

McKechnie and Hobbs (2001) carried out research to establish the extent to which education is compatible with work using a variety of situations like types of work, duration, full time education and part-time education. The research was conducted and published in 1997. Obviously, the educational system and its contexts are always changing. The experiment was centred on the effects of paid employment outside the family on S4 school students. The variables considered in the research include; attendance to school, intention to go back to school after compulsory age, performance at school, further education or career visions and progression to the next class S5, which is the compulsory education class. They categorized students along different groups: those that had never worked, those who worked before and those currently working. Students who worked for less hours, that is, up to five hours in a week; medium hours, that is, between five to ten hours in a week, and high level employment which is beyond ten hours a week. The Scottish Standard Grade system was used to estimate the students’ academic performance. It was a quantitative research. Findings show that a greater number of the students worked less than ten hours per week. Only about 20 % of students worked more than ten hours in a week. The students that worked more than ten hours a week performed badly in examination and had poor attendance, and were less likely to continue to the next class S5. Students that worked less than five hours proved to have better performance

in examination, more likely to return to S5 and better attendance than students who only attended school and had never worked. This suggests that some sort of work experience may be relevant to schooling. Commenting on the findings, McKechnie and Hobbs (2001) insist that:

Students working a low number of hours per week gain potential benefits from employment which influence their performance in the educational arena, for example the practical application of knowledge learned in school and vice versa. Alternatively, the experience of employment could act as a salutary reminder of the importance of doing well in school in order to develop a successful career. Further research is needed before any conclusions can be reached.

(McKechnie & Hobbs, 2001: 18).

Furthermore, aware of the many other factors that might affect the dynamics of schooling and employment, McKechnie & Hobbs (2001) proposed a “balance model” of employment which should consider many factors, such as amount of hours spent at work, time of the work, the nature of work done and the experience gained from such work. The context of research determines the factors to be considered in the balance model and the inter-relationships between the variables. Studies could be carried out using a variety of research methods. In their findings, they uphold that work and education are not incompatible and this supports the “balance model” argument that “views work as potentially good or bad. Its impact on education will depend on the circumstances of the employment and the nature of the education system” (McKechnie & Hobbs, 2001: 18).

The “balance-model” differentiates children’s work by proper evaluation of its advantages and disadvantages. New approaches to children’s work tend not to adopt the position of evaluating the effects work has on child’s attendance and progress in school. The interest is in what will contribute to the child’s best interest from the

benefits that could be obtained from a healthy relationship between education and work. Education is given a broader definition and is seen;

not only as education in school, especially as it is becoming increasingly clear that the typical experience of school contributes little or nothing to the personal development of working children, and even undermines their ability to maintain their position in the growing urban-industrial societies.

(Liebel, 2004:48).

Nonetheless, Liebel (2004) from his ethnological and anthropological research in non-Western cultures suggests that the Western concept of childhood in the industrialized world right from the eighteenth century regards it as progress when children do not work. Work in Western cultures is only regarded as an educational process and is confined to school. This pattern of thinking has been borrowed and assimilated by some international bodies while in some parts of the globe children's work is still regarded as having much value. In some non-Western societies, work given to children is not based on chronological age but on the child's ability to perform the duties assigned. It helps to instil a sense of responsibility in children, a process of learning and preparation in managing more complex tasks, in addition to the material benefits that might accrue from it. The works children do earn them some respect and social recognition. Liebel (2004:87) further suggests that:

In many non-Western societies, the early inclusion of children in work processes is intended to provide the children with skills necessary to master life based on the principle that children learn adult activities best through observation, their own experience, and in some cases imitation. This does not mean mere exercises or simulation; the children's work already has concrete "value", either for the extended family or the village community, or for the children themselves.

In Northern Mali, for instance, the Kel Adagh people train their children by entrusting them with some duties as a way of education using practical examples. Punishment or the threat of punishment are not applied as methods of training, rather

reinforcement and appreciation are used. The parents, guardians and other adults are available to explain and direct the younger ones in the various methods and processes involved in the assigned duties. Education is given to children in a manner that is different from formal school. Working children gain some form of non-verbal knowledge that cannot be restricted to the type of knowledge which formal education imparts. Liebel (2004) argues that:

the official, usually centralistically oriented, school system “takes no note of the potential of local knowledge”. ...Nor does it take note of the specific forms of living in which children take on responsibility for their families while of “school age” or even earlier, and tends to discriminate against and exclude these children.

(Liebel, 2004:92).

Apart from the gain from non-verbal knowledge, Nigerian parents are supportive of child work as a result of the benefits that accrue from it; such as enhanced autonomy, strength and training the child in handling responsibility. Children are of great value and are most cherished as a gift from God. They are regarded as the future investment and insurance of their parents. Children work in the informal sector of the Nigerian economy. The government rarely employs children. Evidently,

their work takes place in the informal sector where regulations, contracts, and benefits are inexistent. Children’s work is most often unofficial with minimal compensation. They work to ensure the survival of their family and themselves. The future of working children is marred. They have a right to survival, protection from hazardous work, and a right to education and development. Child labour violates the fundamental right to childhood. It impairs the child’s physical, cognitive, emotional, social, and moral development. Child labour only helps to perpetuate and recycle poverty in society.<sup>17</sup>

(Ibanga, 2007:83).

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<sup>17</sup> It should be noted that in the above quotation Ibanga (2007) uses the term “child labour” as referring to what the researcher would refer to as “an unjust child labour”. The researcher would like to qualify child labour as “exploitative or unjust” in order to discourage it or as a “good practice of child labour” to indicate that such work and working conditions uphold the best interest of the child and not all work done by children should be prohibited.

This understanding of childhood shows that there are some financial constraints in Nigeria that expose children to the world of work and production and to some dangers, which may be absent in developed countries. Though children in non-Western societies gain from the fruits of their labour, it sometimes costs them part of their leisure time.

In summary, the sub-section establishes that a heated argument regarding the possibility of combining work with education rages on. There are some benefits that children gain from work, which might be helpful in career formation (McKechine & Hobbs, 2001). There is a need to find out the best possible benefits that could be gained from combining education and work since developing countries like Nigeria may not be able to afford the luxury of not allowing children to work at this stage in the country's development. Work imparts some form of non-verbal knowledge which formal education does not provide. There should be an established way of control if children are to work in order to prevent exploitation in all its ramifications.

## **2.5 Evolving concepts of childhood and child work**

The favoured image of childhood prominent in the developed countries of the industrial North has spread to the developing countries of the South following colonial influence. The most recent international legislation on children's rights tend to regard the idea of childhood as a homogenous concept throughout the world. This idea of childhood was incorporated as the ideal concept. "The view that childhood is a fixed notion, 'determined by biological and psychological facts' rather than culture

or society is explicit in international children's right legislation (Freeman, 1983 In: Boyden, 1997: 202-3).

As noted in chapter one, there are two seemingly opposing approaches to working children namely, the child-centred approach and the subject oriented approach (Leibel, 2004). The child-centred approach fails to give prominence to the social status of children as contributors to the growth of the society. Leibel (2004) maintains that this approach was used by those who identify themselves with the principles of *CRC* of 1989 which evaluated work in terms of its adverse effects on child's moral, physical, social and intellectual development. The child-centred approach purportedly adopted in *CRC*:

gives scope for the social recognition and participation of working children. But in so far as children's working experience is considered only with regard to their own "development", scant attention is paid to the importance for them of their social status and their opportunities to influence the development of society as a whole, as individuals or a social group with its own specific interests.

(Liebel, 2004:8).

Liebel (2004) upholds a view of childhood that does not see childhood from the Western point of view. This view rather perceives childhood from a unique viewpoint that regards children as not only in need of protection but also having equal status with the adult. This new conception relates that:

Childhood is regarded not as a special sphere in which as yet immature and undeveloped creatures have to be protected and promoted, but as a sphere in which children too count as people of equal value, having the right and ability to be supported, to have their say, and to take part in decisions as to when they wish to begin working, and at what.

(Liebel, 2004:7).

This view of childhood relates to the subject-oriented approach to working children. This approach regards children as dependent and simultaneously understands that they have their needs and particular interests. Children are to be seen as being capable of taking certain decisions on their own. A subject-oriented approach sees children as contributors both economically and socially to the wider society. Children are regarded not merely as helping the adults or reducing the values of their work to financial relevance. This encourages striving for just working conditions for children that promote human dignity and just wage for their contributions to the society. This approach sees children's work from their point of view including what work means to them and how they evaluate what they do. It is an approach that helps the adults to be open to differences in understanding working children, what they do and how they do it. Children's work is not always exploitative.

Approaching children's work from a subject-oriented perspective means perceiving working children as "social actors" who through their activity contribute to the preservation and further development of human life and the society in which they live, and merit recognition for this. Their economic contribution and social recognition are of equal importance for children's development as subjects.... Recognizing it as an essential activity can, for instance, mean insisting on working conditions appropriate to human dignity and "just" financial rewards.

(Liebel, 2004:9).

However, the subject-oriented approach has some disadvantages such as, children's inability to have objective views and proper knowledge that should inform their actions. The subject-oriented approach could lead to avoidance of taking responsibilities towards children by the society. From a subject-oriented approach, children could be regarded as workers in their own terms although different from adult workers. Children work in a manner that does not deprive them of their specific

rights as children, such as their rights to education and rights to life, survival and development (*CRC*, 1989).

Denying children the right to work and relating to them as “objects” and “victims” rather than “social actors” that need adult protection is in conflict with the contemporary demand by children to have a say in what concerns them and be enabled to act on their own in resolving their issues. A subject-oriented approach recognizes children’s judgments as unique. Children’s points of view and desires are influenced by the norms and ideologies that exist in the society they find themselves.

Liebel (2004) relating some of the social transformations that have been achieved through children’s organizations notes that there has been a current understanding of an “independent childhood” which is a new formulation (Liebel, 2004: 33). This “independent childhood” advocates for children not only contributing to what concerns them alone but to whatever has some relevance to their existence in the society. It is this new advocated “lived participation” by children in the daily affairs of the society that is presently challenging to the understanding of childhood (Liebel, 2004: 33).

In modern times, there are different strands of thoughts and philosophies regarding childhood that could influence policies in the society. In their research, Mizen *et al.* (2001) were “more interested in what children have to say about their work. It takes as its starting point the importance of paid employment as a “majority experience” among British secondary-school age children but its purpose is to consider what motivates these children to seek out and take up opportunities for work” (Mizen *et*



*al.*, 2001: 37). The research was carried out with a group of seventy working children for a 12-month period of their working time. The children were taken from diverse socio-economic backgrounds within England and Wales to ensure variety of characteristics. It comprised of equal number of boys and girls of mostly between 11 and 16 years old. The research knew little of the details and conditions of each job, work relations and particular tasks children engaged themselves but just wanted to know how each child fared at the job. The children were engaged in works like washing dishes, distributing newspapers, unloading vans, sweeping and pricing goods in grocery stores, shoes shops, hardware and electrical shops. It is evident that these children had “such low quality job opportunity” one would like to find out the motivation behind their zeal.

Mizen *et al.* (2001) in their findings remark that the work children do should not be taken as only relevant because of what they will become but should be valued for what it is. The meaning and significance of the work children do might have immediate meaning and relevance for the children themselves and is to be given a prominent place.

Summarily, from exploring “the evolving concepts of childhood and child work” in this sub-section, it is noteworthy that there is an established trend of thought in the manner childhood and child labour are to be understood in the developed countries of the industrialized North which is different from the way it is understood in many developing countries. The impact of colonial rule and the influence of international treaties as regards the understanding of childhood have enormous effect on developing countries. There is doubt that a simple transfer of an understanding of

childhood from the developed countries to the developing countries will work to the full realization of the rights of the working children as envisaged by its proponents. A labour-free childhood is seemingly a luxury for developing countries, including Nigeria. Some international and national treaties operate with a child-centred approach as opposed to subject-oriented approach. Child-centred approach does not see the child as a “social actor” but as an “object” to be protected. Subject-oriented approach values children for what they are and regards them as contributors to the society in which they live (Liebel, 2004). However, children should not be regarded as workers and contributors to the society in the same manner adults are considered as workers and contributors to the society.

From the foregoing, it is commendable that the UN issued an invaluable human right instrument, the *CRC*, for the protection of working children globally. It is arguably important to adopt an approach to working children that would apply an adapted version of the *CRC*, more related to the existing contexts of working children in South East Nigeria. The subject-oriented approach to working children would seem to offer a workable foundation in understanding anew child’s rights legislation in relation to working children in South East Nigeria. This approach promises to enhance the actualization of the goals of the child labour legislation, as the human rights legislation is never an end in itself.

In addition to the comparison of different understanding of childhood and child labour between developed countries of the world and developing countries, Africa has its own peculiar understanding of childhood and child labour. The next section explores the African perspective of childhood with emphasis on the incomplete

transition of the new image of the African child due to the impact of colonialism and current unsupportive social structure in Africa.

## **2.6 Understanding childhood and working children in pre-colonial and post-colonial Africa: Nigeria in Focus**

Change in every aspect of the society has its impact on the way things are conceived generally. Childhood and child-rearing practices are affected by societal changes. Boakye-Boaten (2010) in his studies of the traditional understanding of childhood in Africa and Ghana in particular, examines the factors that contribute to the contemporary understanding of childhood. The transformations in the African traditional concept of childhood have reshaped the image of children and affect the manner society carries out its responsibilities towards children.

Childhood should be understood within a cultural and social context... Children are social beings whose world is constructed within a historical and a cultural frame of reference. An attempt to universalize the concept of the child leads not only to a misunderstanding of the world of children, but also tantamount to interpretational fallacies.

(Boakye-Boaten, 2010:105).

This section briefly explores the structural conceptualization of childhood in Africa. Due to the incomplete transition of the image of the African child, the researcher insists that the theologico-legal resource that this research aims to provide is relevant.

### **2.6.1 Structural conceptualisation of childhood in Africa**

Qvortrup (1994) argues for a structural conceptualization of childhood implying that the roles children play in the society are affected by many factors that have structural relevance in the society. The relevance and nature of the role children play in the society have undergone some changes. Children are essentially part of the structure that constructs their childhood. Realities of life in the society are collectively fashioned both by adults and children in African societies. This conceptualization of childhood agrees to the subjected-oriented approach to working children explored earlier in this chapter. Qvortrup (1994) upholds a structural approach in understanding childhood with an assumption that “childhood is both a period in which children function as human and social beings and also as a category of a social class. Childhood transcends beyond the notion of just a period in children’s lives, but should be perceived as part of the social construct of every society” (Qvortrup, 1994 In: Boakye-Boaten, 2010:105).

In traditional African societies, for instance, the value of children is closely linked to their economic roles, so much that men marry many wives and have many children because of their economic relevance. With the changes in economic dynamics, in the current money economy, having so many children became a burden; consequently, the number of children in families began to go down. As such, the structural conceptualization of childhood in Africa does not prohibit work for children in Africa. It supports the idea of working children. Since care should be taken to ensure dignified work and working conditions for children in Africa, including South East

Nigeria, a theologico-legal resource will be helpful to Catholic agencies working in the area of social justice for working children.

### **2.6.2 Incomplete transition of the new image of the African child**

The image and position of the African child has changed in many African societies in recent times. This is as a result of the changes that had taken place in the socio-political and economic landscape of Africa.

These changes have undermined the ability of the social institutions within African societies to sustain practices and values, which defined children. Changes in the political, economic and the social institution have been the main culprits in the realignment of children within the cultural context of Africa.

(Boakye-Boaten, 2010:110).

Children worked in pre-colonial times in African societies. There is a continuation of child labour in neo-colonial Africa for some reasons, not excluding poverty as it continues to pose a great obstacle to ridding the system of exploitative child labour especially in Nigeria (Olutayo, 1994). However, in pre-colonial Nigeria, children worked in farms. Having more children and polygamy was encouraged as it increased labour force and shares in the allotment of resources and wealth in the traditional family. Children worked hard in pre-colonial era for survival. Olutayo (1994) opines that:

Supplanting the pre-colonial or pre-capitalist mode of production required that the means of labour as well as its object should be fundamentally transformed. On the contrary, the colonial and post-colonial governments have only contributed to the need to perpetuate child labour. Both the means and object of labour have not been modified significantly. Hence, the way of life of the people has remained, more or less, static.

(Olutayo, 1994:208).

Nevertheless, the era of colonialism witnessed the balkanization of Africa by various countries of Europe. These European countries influenced the African cultural values and norms, including the introduction of European system of education to replace the traditional process of socialization.

Imperial Europeans imposed their cultural values through coercive mechanism on indigenous African societies. The process of gross cultural imposition sometimes referred to as cultural terrorism, completely altered the African cultural landscape. The imperialist introduced their foreign social structural system to replace the existing institutions in Africa. Imperial education, which functioned outside the cultural reference of the people, replaced traditional African socialization processes.

(Boakye-Boaten, 2010:110).

According to Onwauchi (1972) cited in (Boakye-Boaten, 2010), the traditional African societies train their children in their customs and values through everyday experiences of life. The adults and elders transfer their moral and societal norms through traditional myths, tales and oral codes of moral conduct. Children learn their trade and means of livelihood from the elders through participation and traditional apprenticeship. Communication skills and creative language expressions were learnt through some form of traditional social relationships and occasions. As such, the method of traditional socialization in Africa had an informal character unlike the educational system introduced by colonialism, which brought about some changes in the African socialization process. The traditional apprenticeship was replaced by education that promoted the norms and values of the colonizers which causes cultural conflicts in the lives of the African child.

Due to the discontinuity that exists between school environment and home environment, children experience cultural conflict (Onwauchi, 1972, cited in Boakye-Boaten, 2010). The traditional agents of socialization in Africa were the

family and the community. With colonialism, the school took over the task without proper transition from the culture of the indigenous Africans. In the traditional African society, norms, traditions, and values are closely connected to each other and to the traditional religion. Precisely, the concept of childhood and the manner of training children were strongly connected to the traditional religious beliefs and practices. With the coming of the colonizers, the school system was introduced with a curriculum that had no reference to the traditional religions. Consequently, the African child could not go to school without having an influence of Christianity being the main religion of the colonizers. In many instances, Christianity substituted the traditional religion of the African societies. “The removal of the African from his religious milieu has had grave consequences for children” (Boakye-Boaten, 2010:111). Africa embraced Christianity thereby relegating the African religious institution to the background. However, Christianity could not guarantee the protection, which the African child experienced in the African traditional religious institution.

More so, colonialism affected the traditional political system in Africa. The traditional system of leadership was replaced by new political structures initiated by the colonial masters. The colonial masters made use of indirect rule system. The colonizers employed the traditional rulers in directing the people and this did not go down well with many African societies as it caused distrust between the traditional rulers and the people. The traditional rulers were charged with the duty of maintaining law and order to ensure the continuity of the colonizers’ agenda. The traditional rulers relegated their traditional tasks as rulers and protectors of their citizens to the background and championed the colonizers’ political initiatives. It

became arguably obvious that “colonialism drastically altered the political serenity of traditional African societies, and replaced it with a foreign concept of governance, which did not provide the needed protections for children” (Boakye-Boaten (2010:111).

In addition, the traditional economic system in Africa was centred on subsistence living and trade was by barter. Changes in the society during the colonial rule affected the African traditional economy and invariably had its impact on the concept of childhood and methods of training children. Colonizers introduced money economy, payment of taxes and school fees for the first time. There was economic motivated mobility from rural to urban cities to meet up with new financial demands due to the introduction of taxes by the colonial masters. Africa started cash crop economies during the colonial era in order to provide raw material for exportation. Consequently, family members lived apart from each other, especially the men, relegating the training of children to their mothers and elderly parents. Family discipline changed as children experienced more freedom and parents had less time for their children. Children were also free from traditional social controls and the relevance of extended family system began to wane. Poverty took a firm stand in African soil as a result of the colonial political economy. Children became commercialized. “Due to the dislocation caused by colonial political economy, many children lost their status as economic assets for their families and became economic liabilities” (Boakye-Boaten, 2010:112).

With the migration of children to urban centres, sometimes with their parents, children continue to be the main support of the family. As a result of the increasing



concern for working children in Africa, legislations have been enacted severally to prevent exploitative child labour without a complete success. The legislation remains insufficient as a result of the disparity between the demands of such legislation and what is obtainable in a particular environment. Olutayo (1994) argues:

One probable reason for such ineffectiveness of legislation is the culture to which the practice is attached. This cultural practice...is a reflection of the difficulty of survival in a hostile environment. Though from pre-colonial to neo-colonial epochs, a very insignificant proportion of the social strata have become privileged and have perpetuated their positions, a very large proportion of the population have continuously found it increasingly difficult to survive.

(Olutayo, 1994:211).

Exploitative child labour remains in practice as a result of poverty and systemic failure. Poor families find it difficult to cope with their meagre resources both in the urban and rural settings. Government welfare scheme for families and especially for children in Nigeria is very poor and unreliable. The putative traditional extended family system that supported the needy has declined. The increase in an individualistic way of life in Nigeria has made child work an alternative survival strategy for poor families and this may continue until there is a significant improvement in the welfare system and social structure (Olutayo, 1994).

Over all, and in spite of the factors already noted above, childhood in contemporary times has not ceased in Africa, including Nigeria (Boakye-Boaten, 2010). As a result of the aforementioned changes in the society, the roles of children have changed but children are still perceived as fragile and vulnerable, in need of support from the society. Children still play their roles in constructing their image in Africa. Children from rich families have “protected childhood” unlike children from poor families who are compelled by poverty to assume adult roles too soon. The role of the

community in child-rearing practices and family support is compromised due to socio-political changes in the society. Children born in the urban setting have less support from the traditional local community in their upbringing while those born in the rural areas receive more from community support. Social institutions, such as, churches, media, schools and the biological parents form the new community for children born in urban setting.

However, many parts of Africa, and Ghana to be precise have changed significantly that even in the rural areas the bond between family members in the extended family has weakened; gradually replacing the traditional communal life of the African with individualism. Similar situation is observable in Nigeria (Okoli, 2009). It seems appropriate to assert that “although Africa is the most diverse population in the world, their historical legacies make their problems some what generalizable. Although it may differ in intensity, the prevailing factors that define the problems of Ghana are the same for the African continent”, including Nigeria (Boakye-Boaten, 2010:114).

By way of summary, this sub-section argues that universalizing the concept of childhood will not lead to a more relevant contextualized understanding but will rather breed confusion. Like adults, children contribute to the construction of social realities in Africa, including Nigeria. Children contribute in constructing their own childhood. Childhood therefore is seen as a social construct, a social class that actively participates in shaping the society (Qvortrup, 1994). Economy is a significant factor that defines the nature of childhood. The researcher argues that

what is needed is a support to the international child labour legislation to ensure that the rights of working children are protected.

With the wind of change in the contemporary Africa due to colonialism and globalization, there were economic changes from subsistence farming and trading by barter to money economy. The education system changed from the traditional informal education to a Westernised form of education. The primary agents of socialization in traditional African societies were replaced with modern structures like school and Christian churches. The political system was affected as a result of the indirect rule system introduced by colonialism. Corruption and other factors also contributed in reshaping the image of the African child. With incomplete transformation in social structures and social welfare system, Nigeria is not yet capable of supporting international legislations based on conception of work-free childhood. The fact remains that the full realization of the rights and welfare of the child cannot be assured and protected unless the existing legal frameworks are taken into full consideration. It is precisely due to the lack of the needed legal frameworks amongst other factors that a theologico-legal resource to assist Catholic agencies in the area of social justice for working children is important and urgent.

## **2.7 Concluding remarks**

From the outset, the researcher explores the different situations and circumstances of child labour in Britain between 1780-1850 to establish that the existing socio-political and economic contexts determine the understanding of childhood and child labour. It noted that demands of factory work are different from demands of

traditional work on working children. Legislation to regulate child labour met with challenges as the socio-economic structure at the moment was not ready to support such a change. The situation improved with the introduction of welfare packages by the British government when through a survey it was gathered that to remain a world power, the human dignity of children as future of the country has to be preserved (Horn, 1994).

As from the 20<sup>th</sup> century, Britain and other developed countries did not regard work as part of childhood. As such, in the wake of fighting against child labour in Europe, the idea of child work was forgotten and seen as obsolete (Liebel, 2004). It is suggested that children work for several reasons, which are not limited to economic benefits. Children should not be deprived of work because work should not be seen as a consequence of capitalist globalization. Work has creative and positive aspects and should not be defined as totally harmful to the integral development of a child. Moreover, children's work might require the same sort of performance that is needed in education. As such, education should not be a barrier to children's work as there is some sort of knowledge that is not offered by formal education. Knowledge gained from work might be relevant in children's career formation (McKechine & Hobbes, 2001). A simple transfer of the notion of childhood in developed countries to developing countries is an unaffordable luxury at the moment. The existing socio-economic and political frameworks in developing countries, like Nigeria, cannot support a labour-free childhood or the enforcement of international child labour legislation based on an understanding of childhood alien to developing countries.

It is noted that although Africa was colonized by developed countries of Europe,

which brought about some changes in the economic and socio-political structures, a universalization of the concept of childhood will not lead to the fuller realization of the child labour legislation, as there is an incomplete transformation in social structures and social welfare systems in Nigeria. As child labour legislation is a means and is not an end in itself, the application of a contextualized child labour resource in order to maximize the benefits of human rights in the area of working children is important. It is due to this need that a theological analysis of child labour legislation with Catholic social teaching is important to enhance the work done by Catholic agencies in the area of working children in South East Nigeria, an area predominantly made up of Catholic Christians.

## **CHAPTER 3**

### **HISTORICAL BACKGROUND OF CHILD LABOUR IN NIGERIA**

#### **3.1 Introduction**

In the previous chapter, the researcher established that contexts influence the understanding of childhood and child labour in any given era. It acknowledged that the Nigerian child took on a new image as a result of colonial influence. As a result of the incomplete transition of the new image of the Nigerian child due to lack of necessary infrastructure and social welfare, South East Nigeria cannot at the moment apply the international child labour legislation as it is based on an understanding of childhood and child labour in developed member states of the United Nations.

This chapter briefly explores the place of children and the work they do in the Nigerian context. It examines the causes of child labour in Nigeria. It argues that there are different types of child labour of which some are specific to the Nigerian context. In order to discourage unjust child labour, this chapter articulates the problems and dangers that are associated with child labour. The researcher argues that child labour practices in Nigeria cannot be properly regulated with the international child labour legislation. The reason for this assertion is, among many factors, that the international child labour legislation is based on child labour on the formal market while working children in Nigeria operate more in the informal sector of the economy. The researcher maintains that child labour may be good or bad depending on the ability to ensure that the rights and dignity of working children are preserved.

“Child labour” as used by the researcher is not essentially evil. Child labour is not used here as an opposite of child work. Child labour and child work mean the same. There could be a good practice of “child labour” and “child work” depending on if the rights of working children are protected. An unjust child labour or exploitative child work is any work that causes injury to a child or militates against the best interest of the child. A good practice of child labour or a good practice of child work is seen as any work that adds positive value to children’s welfare and integral development. However, owing to the fact that “child labour” is used in contemporary times to designate any type of work that does not work to the best interest of the child, the researcher wishes to always qualify “child labour” as positive when it is meant to differentiate it from exploitative child labour. This means that it would qualify “child labour” as positive by using proper adjective so as not to make “child labour” essentially a signal for child exploitation and injustice to working children. This research works to provide a theologico-legal resource on which a good practice of child labour in South East Nigeria could be based.

Owing to the existing Nigerian socio-political, economic and religious context, the researcher argues that a good practice of child labour in South East Nigeria would benefit from an analysis of the international child labour legislation with Catholic social teaching. The provision of a theologico-legal resource would be of help since the majority of the population in South East Nigeria is predominantly Catholic Christians. The next section briefly investigates the Nigerian approach to children, working children and the work they do.

### **3.2 Nigerian approach to children, work and working children**

In sub-Saharan Africa including Nigeria, children are assets for their families, supporting their parents, the sick, the needy and the elderly, emotionally and materially as well as ensuring family lineage continuity (Rwezaura, 1998; Odukoya, 2009). The love of children in Africa, including Nigeria has socio-cultural, political and economic dimensions. Children are seen as gifts from God. Married couples without children are seen as incomplete. To be buried by one's children is regarded as an honour. As Odukoya (2009:231) discovers in his study, "children are morally and culturally obligated to serve their parents...Children are seen as social insurance against uncertainty, especially in the context of subsistence food production under a feudal mode of social organization." Okoli (2009) avers that children belong to the family and to the whole community. Families support their children and children also support their families. The community plays a very important role in training of children. Children are encouraged to participate actively in social life, develop skills and competencies.

Nigeria like many other African countries practices the extended family system. Children are therefore looked upon as part of the extended family unit including their ancestors (Bonnet, 1993). In some instances, whatever affects a child does not only concern the family or extended family but includes the entire clan, village or ethnic group. The traditional educational system is an introduction into the African social structure and its way of life. Generally, children start early in life to learn the trade of their parents by association and participating in farm works and other household activities until they are up to 10 years old. From the ages of 11 to 14, children engage



in various forms of domestic activities, job apprenticeship and production of goods for their elders as demanded by custom and tradition. In Nigeria, this system of traditional African education has now been replaced by the school system brought in by Britain. The emphasis has also shifted to the gaining of educational certificate and civil service job.

Before the influence from Europe, America and other developed communities, the main occupation in South East Nigeria was agriculture. One cannot say it is still strictly agriculture as new techniques of commercialization, industrialization, and job creation, amongst others, have revolutionized the basic understanding of human work. Human work in traditional society was regarded as a basic dimension of human existence through which a human being was able to develop and restructure the society. Human work was regarded as a means to provide shelter and food for oneself, the family and the community.

Work was understood in Igboland as a corporate activity, performed by all members of the community and family. Through work a man, his wife or wives, and children were able to engage themselves in a united and concerted action to complement each other and fulfil their basic needs. Painful though it was, work was regarded as a part of life in traditional society.

(Ike, 1986:8).

The idea of manual work was seen as noble in South East Nigeria, as in some other parts of Nigeria. Work occupies a central position in Nigerian culture even among children. It is believed that it is through work that collective orientation, socialization of children into their own culture, obedience and respect for cultural values, and occupational training for skill acquisition are achieved. Okoli (2009) agrees with Oloko (2003) that exclusion of children from work will adversely affect their integral growth and development. Commenting on the idea of work as part of life vis-a-vis

child labour in Nigeria, Odukoya (2009:231) suggests that; “The idea of child labour in Nigeria is a contemporary one. In fact, most Nigerians still consider advocacy against child labour as a sort of colonial mentality”. More so, Okoli (2009) affirms in her doctoral dissertation that pre-1989 studies defined child labour as the same with child work.

### **3.3 Evaluating child labour in Nigeria**

There is generally lack of sufficient information and statistics at the national and local levels on various aspects of child labour. Different types of child labour exist in varying degrees all over Nigeria, although some forms of child labour seem to be peculiar to some regions. For instance, rearing of cattle is specific to Northern Nigeria while bonded labour is prominent in Eastern and Western regions of Nigeria (Odukoya, 2009). Earlier studies concentrated on some aspects of children’s welfare and did not engage in comprehensive empirical survey of working children in Nigeria [Ike, (1986), Uzodike (1990), Akhilomen (2006), Ibanga (2007), Ihua-Maduenyi (2008), Okoli (2009), Diriwari (2016), Ogunde (2018)]. Some of the studies are library-based. A good number of the studies focused partly or completely on visible working children with little attention given to hidden working children such as, those involved in domestic services and apprenticeship in cottage industries, agriculture and mechanic workshops.

However, with the publication of the *Nigeria National Child Labour Survey* (2001) by the International Labour Organisation (ILO) and Statistical Information and Monitoring Programme on Child Labour (SIMPOC, henceforth FOS, 2001), there has not been another report that is as comprehensive and in-depth in recent times as

it is.<sup>18</sup> Bonnet (1993) insists that there is a vast practice of child labour exploitation in Africa, including Nigeria. Before the *Nigeria National child labour survey* (FOS, 2001), Bonnet (1993) argued that there is not enough information in the public sector as to influence policies and highlight the urgent attention that should be given to child labour. In his views, there is

dearth of information, lack of thought, inadequate awareness of what is at stake: such factors combine to give the impression that the problem of child labour in Africa is not among the most urgent, if indeed it is regarded as a problem at all.

(Bonnet, 1993:387).

The unavailability of information regarding the scale of child labour in Nigeria has not significantly improved. As a result the researcher will rely on the available reports to show that child labour still thrives in order to work out the approach needed to respond to the plight of working children by Catholic agencies and social workers. This research had already established in chapter one that child labour still thrives in Nigeria.

The scenario created by child labour practices in Nigeria shows that the international, regional and national child labour legislations need to be supported in order to enthrone a good practice of child labour in South East Nigeria. One could at this stage wonder what could be the causes of child labour in Nigeria. The next section

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<sup>18</sup> Church survey reports gathered from the thirteen Catholic dioceses in South East Nigeria through their Justice, Development and Peace Commission (hereafter JDPC) office show their efforts in the fight against exploitative child labour [(Ihebinike, C (2016) Orlu JDPC (email communication: October, 2016), Caritas Nigeria and JDPC, (email communication: July, 2016)]. However sparse these reports are, they point to the fact that child labour practices are still in operation in Nigeria, including the South East Nigeria under study. The need to have a synthesized theologico-legal resource for preservation of the rights and dignity of working children remains relevant.

briefly reflects on the causes of child labour, which relates to the nature of child labour practices in South East Nigeria and beyond.

### **3.4 Causes of child labour**

There are many factors that contribute to the persistence and in some places increase of child labour practices. The interplay of different causes at different places and levels of the society determines whether a child becomes a child labourer. Poverty is seen as a major cause of child labour.

In Nigeria, it is obvious that poverty, cultural traditions, and lack of educational opportunities are some of the causes of child labour. Other factors include unscrupulous employers who take advantage of children, public policy and indifference, government corruption and inefficiency, societal prejudice and exploitation of the less privileged groups.

(Ibanga, 2007:71).

In what follows, we shall explore some causes of child labour without in any way suggesting it to be exhaustive.

#### **3.4.1 Family economic activities**

The family is the immediate environment of the child through which the child relates to the outside world. Some children due to cultural expectations and sometimes poverty begin to help their families with some easy tasks and later as they grow up to more demanding responsibilities. Sometimes, it is difficult to draw a line between acceptable work for children and work that are harmful to children, especially when families are involved. A good number of children under the age of 18 are active economically, helping their families in both agricultural and non-agricultural

commercial activities, shops and home-based businesses. The ILO textbook on *Child Labour* identifies agriculture as a major cause of child labour:

Agriculture initiates children into work earlier than other kinds of economic activities, and it often does so within the protective environment of their family. It would be so wrong to exaggerate the protective and “nurturing” aspect of this picture, however, and to forget that farm children are subjects to myriad hazards – the dangers of using agrochemicals and farm machinery, among others... and that working on a farm, even a family farm is not as harmless an activity as it might first appear.

(ILO, 2004:81).

It is disturbing when working in the family agricultural and non-agrarian economic activities prevent working children from benefiting fully from education opportunities and integral development.

### **3.4.2 Family/child poverty**

There seem to be a cyclic relationship between poverty and child labour where poverty is seen as a cause of child labour, and child labour as a cause of poverty. A proper distinction between poor countries and poor households makes this relationship clearer. ILO (2004:84) textbook on *Child Labour* suggests that “poverty at a country level is indeed both a cause and a consequence of child labour.” In Nigeria, where there are many factors that contribute to family poverty and lower-income earning, such as unemployment, bad governance, rapid population growth and other unfavourable socio-economic patterns, there is increase in child labour. In Nigeria, most working children come from poor families and rural communities (Ibanga, 2007).

However, this does not mean that children from families with higher income earning are not involved in child labour. Families with agricultural projects that need many hands may continue to engage working children. The survival trap set by poverty vis-à-vis child labour makes families to weigh the potential benefits of schooling, play and other activities with work. It is more likely that families whose survival is a challenge will give preference to work (ILO, 2004).

Some families in an attempt to escape poverty migrate from rural to urban setting. Some of these families may escape from the difficulties of agrarian economy in the rural areas with hope of better opportunities in the urban centres. In some instances, these migrated families are disappointed to discover that their expectations are not being met and are driven into urban poverty. They are confronted with the challenges of the cities such as unemployment, job insecurity and instability (Ibanga, 2007). Children are thereby forced to engage in work to enable them provide their basic needs and improve their living standards.

### **3.4.3 Parents and their working children**

Challenging family economic situation only requires a solution out of the poverty scale and this must not be through child labour. The decision to engage in child labour as a means of economic benefits or other seeming advantages is entirely the decision of the parents, guardians or the child in some cases. It is the parents in most cases who decide in the face of family poverty between work and school for their children. Parents believe that it is the responsibility of their children to provide for them especially in old age. Sometimes this has led some parents to have more

children even when the family income is low. Sometimes parents arrange for their children's employment even when debt payment is not the issue. This arrangement by parents for the placement of their children at work is done through a known broker. The use of a relative as a broker gives them some assurance of the child's security and wellbeing, but that has not always been the case. In this way, children are exposed to trafficking, commercial sexual exploitation and other nefarious activities from their clients (ILO, 2004).

#### **3.4.4 Working children and the demand factor**

Working children engage in different activities to support the financial base of the family. Some of these activities are family related but some are from outside the family. The demand side of child labour refers to the factors that induce employers to engage children as workers. The supply and demand factors affect the amount of child labour, its productivity, and the amount of compensation due to the child. It may be less difficult to fight unjust child labour if adult workers can do the work carried out by working children at the same cost and conditions. On the other hand, if children are to perform particular tasks which the adults may not engage in for some reasons, it will be more difficult to fight unjust child labour, as this would also impact on the demand side and economy (ILO, 2004). For instance, Nigeria is within the tropical zone and has very hot weather. Child hawkers sell sachet water, popularly called "pure water" during the very hot hours of the day. People will always need drinking water; it is not a trade many adults would like to engage in. Consequently, fighting hawking of "pure water" and cold drinks can be an uphill task in Nigeria.

### **3.4.5 Governments, international influences and globalisation**

Poor governance in Nigeria is a primary cause of child labour. As Akpotu (2004) discovers in his research that successive governments in Nigeria have neglected the needs of the people, including children. This has led to unending cycle of poverty from one generation to the other. Children are forced to work due to poor economic situation in Nigeria. Inflation rate has continued to increase with no end in sight. As a result of this poor economic situation, children engage in work. Apparently, children are born into a country with a legacy of corruption, poverty, ignorance, disease, and unemployment despite the endowment of huge natural resources in Nigeria (Akpotu, 2004).

From the international perspective, international bodies and developed countries may have contributed in some measure to the economic situation in Nigeria and Africa in general. This is as a result of badly formulated crippling policies that adversely affect developing countries and poor masses in Africa. It is a challenge living in a situation with rise in unemployment. More so, there are difficult immigration policies in developed countries that have left poor families and parents in developing countries with no other option than the early introduction of children into “family and community solidarity networks; in other words, they must be put to work” (Bonnet, 1993:376). The result of poor economic policy is children’s involvement in work. Poverty exposes families to vulnerability of all sorts.

Poverty and child labour will not be fully understood without exploring the impact of global economic circumstances that have negatively affected the economy of developing countries. Therborn (2004) acknowledges that the influence of



globalisation may not easily be resisted as information are instantly shared, commodities are interlinked, technologies and political systems are spread, cultural traits are shared, legal systems disagree, religions confront each other, and most significantly, economic policies of different countries clash as well as are entangled with each other. Ali-Akpajiak & Pyke (2003) suggest that trade liberalization has caused some destabilizing effects on local, national and international markets. They insist that globalisation enables the domination of investment, trade and production by transnational corporations, thereby bringing about change that is more advantageous to technology suppliers and rich nations. Certain trade decisions, and policies are influenced and formulated by the rich and powerful nations. It has been argued that “One of the symptoms of globalisation... is that people are increasingly drawn into the global system, so that local happenings are shaped by events occurring elsewhere” (Burgess, 2008:31). Consequently, the eradication of poverty is not achievable with the existent lack of basic services and imbalances in the world economy, where a few get richer while a good number of people suffer in poverty (Shah, 2006). Poverty as a consequence of globalisation becomes a political issue and not just an economic problem.

#### **3.4.6 Other household factors**

There are other family-related factors noted by ILO (2004) textbook on *Child Labour*. Child labour can be caused by a number of difficult family situations such as, single parent families, family illness or incapacity to work, dysfunctional families and unsupportive families. Poor family values, low or total lack of education of the parents or children and low parental skill level are contributory factors to the prevalence and growth of child labour. There are other factors that are not directly

family-related that influence children to work such as, external influences of material values, economic crisis, political factors like bad governance, and social transition, effects of sickness like HIV/AIDS, peer pressure, gender-based child labour with reference to the girl-child, and belonging to a minority population suffering social exclusion.

### **3.5 Types of child labour: Historical and contemporary perspectives**

This section explores the different types of child labour with a historical undertone. An understanding of the traditional and contemporary perspectives of child labour in South East Nigeria will be of benefit in understanding the reason child labour seem to remain an option in a context that is rife with poverty. Traditionally and in contemporary times, child labour remains an alternative support for families in many respects.

#### **3.5.1 Work in agriculture**

In a traditional Nigerian setting, the family is the primary economic unit and family members are the basic labour force, including children. However, working children are not employed in government agricultural setting. Nowadays, children in rural areas of the country engage in agriculture especially in areas where agriculture is the dominant occupation. Children start working in the farm from seven years of age. These children work in harsh climatic conditions of the tropical zone, sometimes with dangerous implements and conditions (Odukoya, 2009). Children work in a variety of agricultural settings like fishing, farming and cattle herding. Children work

in the agricultural setting with their parents. When children work with their parents, it seems not exploitative. However, studies suggest that agricultural work may be exploitative as a result of the role and conditions of work done by children (Ezewu & Tahir, 1997).

In many instances, working children are poorly paid, have no job protection and do not belong to work unions to better their conditions. Employing children in the informal sector seems to be a source of low-income labour as children compete with the adults for employment at all costs. Children provide cheap labour for production of food and crops (Whittaker, 2004). Odukoya (2009) avers that with the introduction of education during the colonial era, children who still worked went to farm after school, weekends and holidays in order to support the family or raise some funds.

### **3.5.2 Street trading**

Trading is a popular occupation in Nigeria from early days. Before the introduction of cowries as legal tender, goods and services were exchanged through trade by barter. Trade by barter involves children hawking goods (Odukoya, 2009). There is a cultural practice in Northern Nigeria to keep women in harems and these women are not allowed to come out in public places. These women in seclusion engage in business through their child traders (Oloko, 2003).

Research reveals that both boys and girls work as street traders in Nigeria. Some of these working children are partly engaged while others are full time in urban and

semi-urban areas, namely: Aba, Onitsha, Ibadan, Kaduna and others (FOS, 2001). Oloko (1990) identifies four categories of street trading, namely; those that sell their wares by moving from door to door in planned neighbourhoods such as, barracks and college compounds, those who sell their wares by going from door to door in unplanned residential neighbourhoods, those who sell their wares by peddling from place to place on street and roads including highways, and finally those who use either temporary or permanent spots around street corners, gates of public and public buildings and motor parks. Sobowale (2016) in his newspaper article in the *Vanguard* entitled, “Managing street trading in Nigeria is a task requiring patience and wisdom” reveals that street trading engages Nigerians as there is unemployment and poverty in the country. Sobowale (2016:1) claims that “it is the only means of employment available to that large number of people – without which they will simply starve to death. If Nigerian street traders were to be a country, they would be one of the largest nations in the world...” Street trading as referred to here includes both adults and children. As such street trading has not been completely dealt with in Nigeria as the problem still exists, maybe to a higher degree than before. Despite the efforts employed at curbing the incidence of street trading and its associated dangers, the practice has remained unabated.

### **3.5.3 Street children**

In Nigerian urban cities, there are some children who live and sleep in the streets with little or no contact with their parents. A number of these children have no homes as they sleep in uncompleted buildings, motor parks and under bridges. Consequently, these children are exposed to bad weather and social miscreants, and

some end up becoming gang members and drug peddlers (FOS, 2001). Some of these children are involved in street trading and sexual exploitation.

Street children are exposed to all forms of dangers. The rights of children living on the streets are not protected. The government should put in place protective measures since it is their responsibility to protect these vulnerable children (Schimmel, 2006). These children do not benefit from education and self-respect as a result of their poverty status. This situation makes it difficult for such children to decide meaningfully on important life choices without constraints. The condition of street hawking children is not completely different from that of street children. Consequently, they have, more or less, similar socio-economic challenges.

#### **3.5.4 Domestic servants**

Children work as domestics in urban areas located throughout the country especially in large cities like Owerri, Onitsha, Ibadan, Enugu, Port Harcourt and other major cities in Southern Nigeria. It is a common practice in all parts of Nigeria.

Historically, domestic servitude predated colonialism and urbanization... Urbanization and increasing employment opportunities for women in both the public and private sectors, especially after independence, led to increased demand for domestic help. Children were taken from villages to the cities to serve as domestic servants in return for opportunities for education and sometimes to acquire occupational skills... The commoditization, commercialization, and marketization of household help resulted in the development of trafficking of children...

(Odukoya, 2009:233).

Children for domestic servitude are taken from several states across Nigeria including Imo, Anambra, Akwa-Ibom, Delta, Ondo, amongst others (Oloko, 1992). Some have come in from nearby countries like Togo and Benin. These children are

exploited economically and have inadequate rest (Ibanga, 2007). The study conducted earlier placed the number of children that work as domestics at 40,000 (Oloko, 1999). The survey reveals that young girls from the ages of 10 and mostly between 13 and 16 years serve as domestic servants. Three-quarters of young domestic servants employed in households in the survey were between 12 to 17 years old, while the remaining one-quarter was 18 years old (Oloko, 1992).

It is difficult to ascertain the extent of children's involvement in domestic services, as it "appears to be the largest commercial market for children's labour in Nigeria because of the hidden nature of this type of work" (Ibanga, 2007:61). Parents regard child domestic service as means of income and sustenance for the family and as having a better promise of brighter future for working children, especially those working in urban setting. It is a cheap source of labour for families in urban setting. Children involved in domestic services sometimes experience physical and mental harm and are affected with long term consequences (Kielland & Tovo, 2006; Odukoya, 2009).

### **3.5.5 Apprenticeship**

Work carried out in apprenticeship shops in cottage industries represents a new form of traditional apprenticeship system (FOS, 2001). Oloko (1992) identified some types of apprenticeship though not limited to the list, namely; bus conductors, mechanic, vulcanisers, iron and metal workers, carpentry, hairdressers, barbers, tailors, weavers, and workers in catering industries. Cottage industries are located all over the country in places like Aba, Onitsha, Kano, Benin, Jos, Owerri, Oshogbo,

and Bida. Boys were more into mechanics, vulcanisers, bus conductors, iron and metal workers, and carpentry. Both boys and girls are involved in weaving and tailoring (Oloko, 1992). Apprenticeship is regarded as a form of training for children. An apprentice is placed under a caretaker for a number of years during which time the child learns the trade or skill. The child may be given monetary payment and sometimes it comes at the end of the training period that may last between 3 to 5 years (Kielland & Tovo, 2006).

### **3.5.6 Child begging**

Historically, child begging was a common practice. Children were encouraged to beg for alms by their parents and guardians, or caregivers. Some children are used as aid for adult beggars who were sick or pretended to be sick. Odukoya (2009:234) reveals that “In some parts of the country, women hired children from their parents as begging baits for unsuspecting members of the public. The parents got paid for their children’s service.” Children work as beggars in Nigeria even on risky highways. Begging is not ordinarily considered as work and sometimes children work for organized group to obtain money from passers-by.

Children involved in child begging are exposed to assault, sexual exploitation and health issues due to bad weather. Child begging is prominent in the northern parts of Nigeria where the Koranic system of education known as Almajiranci or Almajirai is common practice. In the religious education system, pupils are encouraged to beg for sustenance and have been exposed to unwholesome behaviour (Iman, 1998). Odukoya (2009) insists that *almajiri* street begging is not a “product of Islamic

religion” but as a result of financial needs. “The *almajiri* were children put in the care of ulamas for purposes of obtaining Koranic education, and with no other way to provide for their welfare, the ulamas used them as farm labour and child beggars in order to provide for the upkeep of both the ulamas and the children” (Odukoya, 2009:234). However, *Nigeria National Child Labour Survey* discloses that child begging is not restricted to the Koranic system of education as southern cities have a number of child beggars (FOS, 2001).

### **3.5.7 Scavengers, child prostitution, and bus conductors “agbero”**

Children engage in work available just to make ends meet. A good number of them come from poor families. Child poverty puts children out in an unhealthy environment. Child scavengers work with bare hands and feet on garbage heaps and are thereby exposed to risk of injury from sharp objects (FOS, 2001).

A study reveals that children are involved in prostitution especially in major cities. This has become a significant problem, as there is commercial sexual exploitation of female children in Nigeria. Some places are notably prominent in child prostitution, namely Port Harcourt, Owerri, Calabar, Markurdi, Ilorin, Lagos and Maiduguri (FGN 2001).

There are a number of young bus conductors called “agbero” in the transport industry in Nigeria. There are also adult conductors in the transport industry. Onuikwe (1998) asserts that drivers exploit young conductors economically. These



young conductors are exposed to dangers, injury and are vulnerable to drug addiction and social misdemeanour.

### **3.5.8 Child marriage**

Child marriage is considered as child labour in some places. Odukoye (2009) explains the reason for this attitude towards child marriages in Nigeria:

Since matrimony was considered the ultimate destination of a female child, every effort to accelerate her arrival at this traditionally ordained destination was considered merely the march of destiny. It is therefore not surprising that child marriage was not an issue that was considered properly treated along with the issue of child labour.

(Odukoye, 2009:234).

Early marriages are a common practice in all parts of Nigeria, especially the northern region. Girls as young as 9 years old are forced to marry by their parents and guardians, sometimes to adults who are much older than them. Consequently, these girls “are often traumatized for the rest of their lives as they are not yet ready for adult life and are physically, physiologically, and mentally inadequately prepared for marriage or childbirth” (Ibanga, 2007:62-63). Child marriage does not work to the advantage of the girls as it truncates their educational opportunities and acquisition of other values and skills for coping with adult life.

### **3.5.9 Other forms of child labour**

There are many other forms of child labour as children are ready to do just “any work” to achieve their needs. Some earlier forms of child labour like pawns and bonded labour may still be in practice away from the public notice. It was common

in eastern and western parts of Nigeria and involves the pledging of children for a loan. Pawned children work for the creditor “until the final liquidation of the loan” (Odukoye, 2009: 233). Child trafficking in recent times has become a popular supplier of child labourers. Child trafficking will be used for illustration of child labour in the next chapter.

### **3.6 Problems and dangers of child labour**

The definition and aspects of child labour keep changing as there is always evolving new works carried out by children. As already noted, child labour has always been considered noble and advantageous to the integral growth and development of children. However, child labour as a result of lack of appropriate measure and its exploitative misuse has numerous consequences. Oloko (1992) observes that young domestic servants were highly vulnerable from the manner of recruitment and remuneration. Poverty, illiteracy, traditional practices, large family size, polygyny, marital instability are some of the causes of child labour. Oloko (1992) argues that working children are exposed to diseases, accidents, assaults, sexual exploitation, extortion, deviant adults and many other educational consequences, ranging from absenteeism, dropping out of school and lack of punctuality. Research conducted by the Federal Office of Statistics Nigeria avers that:

The frequently identified hazards of child labour include accidents, assault, sexual harassment, rape, abduction and drifting into delinquent gangs. Physical and health consequences of child labour include stunting, breathing problems owing to toxic substances, accident proneness, contamination of cuts and festering wounds. Cognitive problems include, not attending schools, class retention, and high drop out rate and achievement deficit. Social and psychological consequences include, isolation of working children from their families and peer-groups, stigmatization of work by peers, lowering of self- esteem of children and perception of relative deprivation vis-à-vis peers.

(FOS, 2001:28).

Elaborating more on the psychological consequences of child labour, Schimmel (2006) upholds that it is difficult for people with economic and social vulnerability to freely make proper life decision as a result of their impaired disposition. Schimmel (2006) employs Abraham's Maslow's hierarchy of needs to argue that human beings prioritize and pursue their needs beginning from the most basic. She applies it to street children and infers that they did not choose the street but had to because they perceived the street to be the place where their basic needs will be met. She argues that decisions should be made on behalf of children for their proper development when they lack the adequate capacity to do so properly. Schimmel (2006:226) insists that "respecting a child's autonomy does not mean simply deferring to a child's choices, even if these are detrimental to his well being and may harm his capacity to realize his human rights in the long term."

The sense of self-esteem and dignity cannot be developed in a hostile environment on the streets since these children are prone to have made adaptive and deformed decisions "largely predetermined by the structural deprivations and pathologies of street life and thus the 'choices' that they make cannot be considered to be choices made under conditions of freedom" (Schimmel, 2006:230). The economic situations of street children or street hawking children are mainly the same for all working children. They lack proper discretion to think for themselves and so need some assistance in that respect in order to protect them from economic exploitation and other hazards.

### **3.7 Concluding Remarks**

From the foregoing, it is evident that child labour has always been a part of the life of children in Nigeria. The Nigerian approach to work shows that children are considered as an asset with regard to work and supporting the family financially. Work has other benefits besides supporting family and individual child's finances. The research shows that in so far as the factors that sustain the demand for child labour remains, child labour would continue to thrive. Child labour could be seen as part of the traditional reliance in Nigeria. As a result, in any need of financial support, parents do not hesitate to send their children to work. The economic and socio-political climate in Nigeria is biting to a good number of its citizens. It is obvious that children will continue to work despite the problems and dangers involved. It is owing to this reality that the implementation of the international child rights legislation, the *CRC*, would need a support to maximize efficiency in South East Nigeria.

## CHAPTER 4

### CHILD'S RIGHTS LEGISLATION AND PROTECTION OF WORKING CHILDREN IN SOUTH EAST NIGERIA

#### 4.1 Introduction

In the previous chapter, we have established that child labour still exists in its various forms in Nigeria, including South East Nigeria. The work that children do is always evolving. This research is meant to discourage unjust child labour in its various forms and contribute to the protection of working children from economic exploitation. Evidently, despite the measures taken globally and locally against exploitative child labour, it has continued to thrive in its different forms in Nigeria. Nigeria has ratified the International Conventions on child labour and the regional *African Charter on the Rights and Welfare of the Child* (1990). As earlier mentioned, the available situation analysis on child labour suggests that about 15,027,612 children are working in various parts of Nigeria (FOS, 2001). A report from the International Labour Organisation (ILO), International Programme on the Elimination of Child labour (IPEC), shows that some progress has been made in the fight against exploitative child labour globally (ILO, 2013). Similarly, there is a moderate advancement in the fight against the worst forms of child labour in Nigeria (USDOL, 2017).

This notwithstanding, there is a need to re-evaluate the relevance and adequacy of the legal instruments available for the elimination of child labour in Nigeria. This chapter explores as much as is relevant to my research, the provisions of child's rights legislation for the fight against exploitative child labour. Specifically, the United Nations' *Convention on the Rights of the Child (CRC)* of 1989 and the

regional *African Charter on the Rights and Welfare of the Child (ACRWC)* 1990 will be examined in relation to the provisions of 2003 *Child's Rights Act* of Nigeria (*CRA*). The gaps in the implementation of strategies in the fight against exploitative child labour will be explored. This chapter acknowledges the presence of child's rights legislation that prohibits exploitative child labour but argues that its legal provisions are insufficient to ensure the protection of the rights of working children as well as fight against the exploitation of working children, especially in the informal sector. It claims that contribution from other disciplines, especially Catholic theology would bring an additional insight towards ensuring a fuller realisation of the rights of working children in South East Nigeria. It insists that the contribution of Catholic social teaching could be of relevance to a more unique way of understanding working children and the work they do. To provide a background to the afore-mentioned child's rights legislation, the section begins with a brief historical overview of international standards of children's rights and the African regional treaty.

#### **4. 2 The development of international standards of children's rights**

The beginnings of the *CRC* can be traced to the campaign to protect the rights of children by a nongovernmental organization (NGO) called Save the Children International Union (SCIU). Eglantyne Jebb founded the SCIU due to the sufferings experienced by children after the First World War. Under the leadership of Miss Jebb, the SCIU articulated its first draft of *Declaration of the Rights of the Child* (hereafter *DRC*) on 23<sup>rd</sup> February 1923. The draft was later ratified in the SCIU fifth general assembly on February 1924 (Cohen, 1990; Kaime, 2009a; Rehman, 2010).

The 5<sup>th</sup> Assembly of the League of Nations later adopted Jebb's Declaration as the *Geneva Declaration of the Rights of the Child* on 26 November 1924. Later, in a more comprehensive version the United Nations adopted it in 1959 as a *Declaration of the Rights of the Child*.

The *DRC* as ratified by the SCIU in 1924 and adopted by the League of Nations in 1924 was the first document to officially recognize that children have specific rights and affirms the role of adults towards children's welfare. It contains five fundamental principles of children's rights and enjoins "men and women of all nations" to know that "mankind owes to the child the best it has to give" (*DRC*, 1924: Preamble). The *DRC* contains fundamental rights of children, such as rights to normal development, feeding, shelter and remarkably, protection against "every form of exploitation" (*DRC*, 1924: 4<sup>th</sup> Principle). Here, the foundations of children's rights to protection from all forms of exploitation, especially economic exploitation in subsequent legislation seem to have been laid. Secondly, its provision in the "Preamble" that "mankind owes to the child the best that it has to give" seem to be the force behind the drafting of subsequent treaties that emphasize the "best interest of the child", such as the *CRC*, *ACRWC* and *CRA* (Rehman, 2010). Unlike the aforementioned legislation, the provisions of *DRC* have no binding force since they are not necessarily rights but a guide to responding to the wellbeing of children (Kaime, 2009a).

The UN Charter was adopted in 1945<sup>19</sup>. The *Universal Declaration of Human Rights (UDHR)* was drafted by the United Nations. The United Nations General Assembly adopted the *UDHR* on 10 December 1948. The *UDHR* does not provide specific independent rights for children. It provides general rights regarding protection and non-discrimination in article 7, special care of mother and child in article 25(2), free and compulsory elementary education in article 26(1), and rights for parents to choose best education for their children in article 26 (3).

Just over ten years after the *UDHR*, on November 20, 1959, the United Nations General Assembly based on the structure and contents of the 1924 original adopted the first instrument that treated children as a separate group of persons endowed with rights. This document is called United Nations' *Declaration of the Rights of the Child (UNDRC)*. It has a "Preamble" and ten principles. The "Preamble" confirms the *DRC* provision that "mankind owes to the child the best it has to give". It has provision for the basic rights of the child in international law, such as, special protection in principle 2, social security in principle 4, prohibition from separation of the child from the mother in principle 6, free and compulsory education in principle 7 and notably, protection from "all forms of neglect, cruelty and exploitation" while ensuring that children are not employed in hazardous work in principle 9 (*UNDRC*, 1959). Like the *DRC*, the *UNDRC* emphasizes the need to give the best to the child and its protection from all forms of exploitation. The *UNDRC* in addition legislates on protective and child friendly employment laws.

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<sup>19</sup> It is to be noted that in 1945, the United Nations signed the *Charter of the United Nations and Statue of International Court of Justice* (hereafter UN Charter) on 26 June 1945, and it came into force on 24 October 1945. Despite coming after the *DRC* and during much suffering inflicted by the horrors of Second World War on children, the UN Charter has references only to human rights in general without any special treatment of children's rights (UN Charter, 1945).



Although the 1959 Declaration was a non-binding resolution of the General Assembly, its statement on the rights and welfare of the child set the foundation for the subsequent development of the corpus of child law at the international level. It marked a break with the prior conception of children as beneficiaries of charity and developed the child as a subject of international law with the ability to enjoy the benefits of specific rights and freedoms.

(Kaime, 2009a:14).

During the celebration of the 20<sup>th</sup> Anniversary of the 1959 Declaration, the United Nations proclaimed 1979 the International Year of the Child. The United Nations General Assembly, responding to a proposal by the Polish government, charged the Commission on Human Rights to draft a convention on the rights of children that would be a legally binding instrument. The French government provided a model treaty to the Commission, which the established Working Group of the Commission started to work with in 1979 (Cohen, 1990). The *Convention on the Rights of the Child (CRC)* was adopted on 20 November 1989 and came into force the following year, 2 September 1990, barely nine months after its adoption. It received the greatest and quickest ratification of all human right treaties from many states parties (Kaime, 2009a). Nigeria signed the *CRC* on 26 January 1990 and ratified it on 19 April 1991.

Though the *CRC* seem to have received general acceptance, many member states have made reservations, declarations and objections regarding some provisions of the treaty. There is a general agreement that the rights of the child are to be protected, but the manner in which this is to happen varies owing to vast differences in contexts. The *CRC* will be discussed more in later sections in relation to its relevance to child labour and working children in Nigeria. There are two optional protocols to supplement the rights contained in the Convention: the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed*

*Conflict 2002*, and the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2002*.

Nevertheless, there are other international legal instruments that are focused on the rights of the child, such as; the *International Labour Organization, Minimum Age Convention (No. 138) 1973*; the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985*; the *United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special reference to Foster Placement and Adoption nationally and internationally 1986*; and the *International Labour Organization Convention on Worst Forms of Child labour Convention (No. 182) 1999*. The researcher will limit the appraisal to *CRC* as it relates to working children and child labour. Cross-referencing to relevant international legal instruments may be applied as the need arises.

As the global development of international standards of children's rights gained momentum, the African continent was not left out. Many African states were still under colonial rule when the *DRC* (1924) and *UNDRC* (1959) were adopted. This notwithstanding, at the 16<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity (OAU) in 1979, the *Declaration on the Rights and Welfare of the African Child 1979 (DRWAC)* was adopted.<sup>20</sup> In its "Preamble", it called on all member states of the OAU to form commissions endowed with legal powers for the enforcement of the UN resolution 1/31/169

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<sup>20</sup> It is argued that the OAU Session "quite clearly... subscribed to the ideals that the 1959 UN Declaration enunciated", endorsing with "political force to an otherwise particularistic account of children's rights which did not have African cultural foundation" (Kaime, 2009a:21).

General Assembly proclaiming 1979 International Year of the Child. It recognizes the *UNDRC* of 1959. It provides for health, nutrition and education in article 6, out-of school and non-formal education in article 7. The *DRWAC* presents African children as the inheritors and keepers of “cultural heritage of their own countries and of Africa as a whole” in article 10. It however warns that cultural values should not deprive children of their rights. Its interest in non-formal education could be a pointer to the fact that childhood should not always be defined in relation to formal education, especially in developing member states like Nigeria.

The OAU in 1981 adopted the *African Charter on Human and People’s Rights* (*ACHPR*), also known as the Banjul Charter. The Banjul Charter did not refer to children extensively despite coming after the *DRWAC* of 1979. It referred to children only in the context of “women’s rights”, calling on member states to protect the rights of women and children as contained in “international declarations and conventions” in article 18(3). However, this does not make state parties to the Banjul Charter bound by the *UNDRC* 1959 or other later legal instruments regarding women or children.<sup>21</sup>

Aware of the *CRC*’s recognition in its “Preamble” of “the importance of the traditions and cultural values of each people for the protection and harmonious development of the child”, the African Union in 1990 adopted the *ACRWC*, an African adapted version of the *CRC*. The *CRC* has been criticized as being too Western and too broad (Okoli, 2009). The *ACRWC* approaches African concerns in a

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<sup>21</sup> There was no process of ratification followed for its adoption by member states. The *Vienna Convention on the Law of Treaties*, (1969) holds that states parties need to formally follow the ratification process of every declaration or convention before they are considered bound legally by its provisions.

manner that is different from the provisions of the *CRC*. It prohibits child labour like the *CRC* but adds that children have responsibilities towards their parents and the community. An understanding of childhood where children are shielded from productive activities and other responsibilities is an unaffordable luxury to developing countries, including Nigeria (Kaime, 2009a). Notably, the *ACRWC*:

incorporates the universalist outlook of *CRC*, but at the same time clothes its conceptions within the “African cultural context”. It is, therefore, a document with a cultural-universalist outlook and a perfect starting point for the consideration and elucidation of children’s rights in Africa.

(Kaime, 2009a:24).

Nigeria signed the *ACRWC* on 13 July 1999, ratified it on 23 July 2001 and deposited it on 2 May 2003. Its relevance in the eradication of exploitative child labour will be explored in later sections. It is of great value to the development of child rights in Africa, including Nigeria.

#### **4.3 Development of child’s rights legislation in Nigeria**

Child protection legislation was provided by the 1958 *Children and Young Person’s Act (CYPA)* prior to the enactment of 2003 *Child Right Act (CRA)*. The *CYPA* was more about juvenile justice laws than about child labour legislation. Britain promulgated the *CYPA* in 1943 before it was reviewed and incorporated into Nigeria’s federal laws in 1958. With the ratification of the *CRC* and *ACRWC* by Nigeria without reservations, the *CYPA* was seen as inadequate in providing for the rights and welfare of the Nigerian child. In 1988, new laws to protect children were drafted through organized conferences by the Nigerian Chapter of The African Network for the Prevention and Protection against Child Abuse and Neglect, UNICEF, and the Ministries of Justice, Health and Social Welfare. This draft aided

the Nigerian government in the drafting of 2003 *Child's Right Act (CRA)*. The *CRA* presents a new definition of child protection mechanism and gives children the opportunity to participate in issues that relate to their rights and wellbeing; such rights are absent in the *CYPA*.

In 2003, the Nigerian national legislature passed the *CRA* in the Federal Capital Territory (FCT) Abuja. The *CRA* has different levels of acceptance and enforcement in different states of the country. The fact is, “the legislation on issues concerning children in Nigeria is in the residuary legislative list and as such depends on the states. Individual states are meant to adopt and adapt the *Child Rights Act*” (Iguh, 2011:98). Each state has to ratify the *CRA* before it becomes a law in its territory. Nigeria has 36 states plus the Federal Capital Territory, Abuja. In all, the Federal Capital Territory Abuja and 23 states have “adopted and adapted” the *CRA*, as of 7<sup>th</sup> October 2014 (USDOL, 2014). All the 5 states within the South East research area have adopted the *CRA* (2003).

The 2003 *Child Rights Act* of Nigeria was structured in a rights-responsibilities approach. It is adapted to the Nigerian cultural context making it relevant to the needs of the Nigerian child. Like the *CRC* and the *ACRWC*, the *CRA* has four general principles of children's rights; best interest of the child in sections 1 and 2, right to survival and development in section 4, right to freedom from discrimination in section 10, and respect for the views of children in section 3 (*CRA*, 2003). In order to place the *CRA* in a wider context of legislations, the next section will briefly explore these general principles that provide the guide towards achieving other children's rights in relation to the protection of working children from exploitation, upholding

the dignity of working children and a fuller realization of the provisions of child's rights legislation especially in South East Nigeria.

#### **4.4 The *Child's Rights Act* (2003) and the four general principles of children's rights**

The *CRA* follows the principle of "best interest of the child" as contained in the *CRC*. It could be recalled that the remote provision of this principle was given in the "preamble" to the 1924 *Declaration of the Rights of the Child* (*DRC*), which provides that "mankind owes to the child the best it has to give". The articulation of this principle that ensure giving the "best" to the child could have inspired the four general principles. The four general principles of children's rights provide for the best interest of the child namely; right to life, survival and development, right to freedom from discrimination, and respect for the views of children. The general principles define and guide other provisions of children's rights as contained in the *CRC* of 1989, *ACRWC* of 1990 and *CRA* of 2003. These four general principles of rights are foundational in the project to protect the rights of working children and in the fight against exploitative child labour in South East Nigeria.

##### **4.4.1 The principle of non-discrimination**

The *CRA* prohibits discrimination of all sorts against children. Articles 1 and 2 of section 10 of *CRA* provide the principle of non-discrimination:

1. A child shall not be subjected to any form of discrimination merely by reason of his belonging to a particular community or ethnic group or by reason of his race of origin, sex, religion or political opinion.
2. No child shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

The provision of the principle of non-discrimination by the *CRA* follows domestication of the *CRC* by the Nigerian government in 2003. Article 2(1) of the *CRC* provides this same principle as follows:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

In article 2 (2) of the *CRC*, the state parties are charged with the responsibility of ensuring that the aim of this article is realized. The *ACRWC* of 1990 presents its principle of non-discrimination in a slightly different and unique manner in article 3:

Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.

Like the *CRC*, the *ACRWC* prohibits discrimination based on inherited status or on the child's peculiarities. The *CRC* prescribes the application of this provision within the "jurisdiction" of member states as opposed to territorial boundaries. The *ACRWC* remains silent on this implying that member states are called upon to see to the full realization of all children's rights without restrictions within the continent (Lloyd, 2008). Article 26 of *ACRWC* goes further to include other forms of potential discrimination, such as, states living under apartheid regimes, war, and military destabilization. It is noted that the *CRC* did not define what it meant by "discrimination". The use of the term "jurisdiction" in the *CRC* is of great relevance since there are some activities that take place beyond the territorial boundaries. The *CRC* and the *ACRWC* added "other status" to cover any other form of discrimination not mentioned in the list. The provision of "other status" could be interpreted as

including the rights of working children, given that, like adults, children also work in Nigeria as in some other parts of the world. However, the term “other status” is absent in the *CRA*, leaving a loophole for the potential exploitation of working children. Adult’s work has official recognition and as such the details of the working conditions of adults and just remuneration are provided for in legal instruments, such as the Nigeria *Labour Act* (1990). Children’s work is yet to receive similar recognition and attention in Nigeria. This could suggest that there is discrimination against working children and the work children do in Nigeria. This attitude may contribute to official neglect of children’s rights as workers and active contributors in the society.

#### **4.4.2 The principle of the best interest of the child**

The articulation of the best interest of the child principle has its first formulation in the *CRC* and is also contained in the *ACRWC*. At the international level, article 3 of the *CRC* provides for the best interest of the child. As one of the general principles it proposes that all actions taken for the welfare of the child should be for the best interest of the child. Article 3 (1) states:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

In Nigeria, the *CRA* provides for the best interest of the child. This principle is provided for in section 1 of *CRA* as follows:

In every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary



consideration.

Article 3 (1) of the *CRC* makes the best interest of the child “a primary consideration” in any measure taken in relation to children. It covers activities carried out by the public and private bodies, such as, “welfare institutions, courts of law, administrative authorities or legislative bodies”. The use of “a primary consideration” instead of “the primary consideration” has been identified as a possible avenue of cultural relativism. The use of “a primary consideration” makes it possible to have another consideration over the child’s best interest. This constitutes a problem in giving definitive judgements in international tribunals (Rehman, 2000:565). This article is further weakened by the distinction between civil and political rights of the child on the one hand, and the economic, social and cultural rights of the child on the other hand in article 5 of the *CRC*. The civil and political rights are applicable to any child in any situation while the economic, social and cultural rights are subject to maximum available resources of each member state. This provision creates a loophole in the administration of justice in these terms. Member states could argue that they lack the resources to meet the demands to this right. This weakness in so far as it may be true in some instances opens up the need to give a positive recognition and support to working children, especially in Nigeria where child poverty is pervasive.

More so, at the African regional level, the best interest of the child is provided by article 4 of the *ACRWC*. It is the foundational principle to the other three general principles in the manner it is presented in the *ACRWC* (Lloyd, 2009). It improved on the formulation of this principle as provided for by the *CRC*. It is more definite in its consideration than the *CRC*. Article 4 (1) of the *ACRWC* provides that: “In all

actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.”

It is to be noted that unlike the *CRC* that provides the best interest of the child as “a primary consideration”, the *ACRWC* sees it as “the primary consideration”. This means that for the *ACRWC*, all considerations on issues relating to children must firstly be for the best interest of the child. This provision is contained in the *ACRWC*, a legal document and not in the recommendations of the committee. The *CRA* retained the *ACRWC* formulation of “the primary consideration”. This principle adds strength to the argument for a just working condition for working children in Nigeria. It is for the best interest of working children to be protected and treated justly in both formal and informal labour sectors in Nigeria.<sup>22</sup> As such, any contribution in this regard from other institutions and agencies, including the Catholic Church will be of immense help towards achieving a fuller realization of the rights of working children in South East Nigeria.

#### **4.4.3 The principle of the right to life, survival and development**

The *CRA* following the *CRC* and the *ACRWC* provides for the survival and development of every Nigerian child. Section 4 of the *CRA* holds that “every child has the right to survival and development.” The *CRC* has a more profound provision

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<sup>22</sup> Ihua-Maduenyi (2008) underlines the meaning and difficulty in the universal application of *CRC* to particular contexts like Nigeria in his doctoral thesis, *Considering the Rights and Best Interests of a Child in a Multi-cultural Civil Society with special reference to Nigeria*. The research avers that the principle of the best interest of the child would seem to vary according to contexts, due to differences in cultural, religious, economic and social frameworks. This research is recommended for further reading on the best interests of the child.

on the principle of right to life, survival and development, which inspired the *CRA*'s formulation. Article 6 of the *CRC* proves to be a general reference point for other provisions of the Convention. The rights to life, survival and development principle are established by article 6, which states that: "1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child." The Committee calls for the widest interpretation of "survival and development of the child". Development of the child should be interpreted in a more exhaustive sense, including his moral, mental, social, physical and psychological development. State parties are required to put in place the practical steps to realise the ends as specified in this article. The qualitative aspect of survival here connects this article to the provisions of article 31(1) of the *CRC*, which articulates the children's rights to leisure, rest, play and cultural life of the community. The right to life abhors anything that deprives children of a fulfilled life, such as poor feeding and diseases.

Poverty denies children the right to quality life, survival and development. Child poverty has been noted as one of the factors that expose children to exploitation the world over, especially in Nigeria (USDOL, 2014). The dynamics of poverty and child development are related. In member states like Nigeria, where poverty is a primary factor in child labour, there is a need to properly define the boundaries of dignified child labour and exploitative child labour. This situation strengthens the argument for better working conditions and protection from economic exploitation of working children in South East Nigeria.

The *ACRWC* in its articulation in article 5 provides the African child the inherent right to life, survival and development. This provision maintains that:

1. Every child has an inherent right to life. This right shall be protected by law.
2. States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.
3. Death sentence shall not be pronounced for crimes committed by children.

This article refers to some “overarching concepts and situations, such as poverty, disease, war and conflict, capital punishment and disintegration of the traditional family unit” (Lloyd, 2008). This provision is further strengthened by article 17 that deals with the administration of juvenile justice. Article 17 calls for “special treatment” of all juvenile offenders “in a manner consistent with the child’s sense of dignity and worth and which reinforces the child’s respect for human rights and fundamental freedoms of others.” The manner some parents, guardians, government and market agents treat working children in Nigeria goes against the rights of children who are struggling to fend for themselves and support their families. Their life, survival and development are endangered by unprotected, unstructured and unsupervised working environment and conditions (Okoli, 2009).

#### **4.4.4 The principle of respect for the views of children**

The principle of respect for the views of children is provided for in section 3 of the *CRA*. This section observes that every Nigerian child is entitled to all the rights as enshrined in Chapter IV of the *1999 Constitution of the Federal Republic of Nigeria*. Section 39 of the Nigerian Constitution provides for the freedom of expression to all, not excluding children. This adds value to the *CRA* provision in section 7, which guarantees freedom of thought for children. The parents are to play a vital role in

helping the child express his or her views. Freedom of expression is provided for in section 7 of the *CRA*:

- (1) Every child has the right to freedom of thought, conscience and religion.
- (2) Parents and, where applicable, legal guardians shall provide guidance and direction in the exercise of these rights having regard to the evolving capacities and best interest of the child.
- (3) The duty of parents and, where applicable legal guardians to provide guidance and direction in the enjoyment of the right in Subsection (1) of this section by their child or ward shall be respected by all persons, bodies, institutions and authorities.

The *CRA* following article 12(1) of the *CRC*, specifies the manner in which the right to freedom is to be applied to children. It maintains that it has to be in the “best interest of the child” who should be respected or valued based on the “evolving capacities” of the child. This gives room for parental guidance and control. Child’s rights legislation makes a child the “active subject of rights” as opposed to passive recipient of rights in judicial and administrative proceedings as depicted in article 12 (2) of the *CRC* and article 4(2) of the *ACRWC*. The *ACRWC* in article 7 and article 4(2) safeguard the right of the child to participate by free expression of his or her opinions to ensure effective realization of the provision of all other rights. It confers dignity on children as holders of rights and social actors in the society rather than passive recipients. Recognition of this right would be an advantage in the fight against exploitative child labour and the preservation of the rights of working children.

#### **4.5 Who is a child?**

From the foregoing, it is to the child that the principal legislation on children’s rights under consideration namely, *CRC* of 1989; *ACRWC* of 1990 and *CRA* of 2003, are focused. They provide for the best interest of the child, right to life, survival and

development, right to freedom from discrimination, and respect for their views. Article 1 of the *CRC* defines a child for the purposes of the Convention as “every human being below the age of eighteen unless under the law applicable to the child, majority is attained earlier”. This provision is flexible and makes its importance uncertain. It fails to state the minimum age limit state members could allow for the declaration of majority. This implies that in the member states where the age of majority is attained before eighteen years, the person will be entitled to all the rights applicable to adults. At the same time, the same person is not covered by the special protection that is applicable to children alone. This exposes children to danger and other avenues of vulnerability, such as child participation in armed conflicts, child labour and child betrothals (Lloyd, 2008).

At the African regional level, article 2 of the *ACRWC* defines a child simply as “every human being below the age of 18 years”. Unlike the *CRC*, there are no conditions attached. Problems may arise when it comes to ascertaining the chronological age of African children as a result of inefficient keeping of birth records. There are other traditional practices and concepts that put this definition under further inquiry, such as the initiation ceremonies and physical capability (Lloyd, 2008).

In Nigeria, the *CRA* defines a child as anyone below the age of 18 (section 277). This conforms to the provision of the *ACRWC*. The provision of the *CRC* on the definition of a child remains unclear and breeds confusion. The confusion regarding age widens in Nigeria as a result of the nature of its federal character. The National Assembly of the Federal Republic of Nigeria enacted the *CRA* but each state’s House of Assembly

has the responsibility for adopting and sometimes adapting the legislation passed by the National Assembly. Based on this provision, some states in Nigeria changed the definition of a child, such as Akwa Ibom, where a child is a young person under the age of sixteen (AKSG online, 2015).

In relation to working age, the *ILO Minimum Age Convention, 1973* (no.138), is the first to be adopted by an international body. It sets a standard age applicable to working children. This document like other treaties condemns exploitative child labour. In article 2, it specifies a minimum age of 14 years and 15 years for developing and developed member states, respectively. The *ILO* in article 7 sets a minimum age of 13 years and 12 years for “light work” in developing and developed member states, respectively. Regarding hazardous works, the *ILO, Minimum Age Convention, no. 138* provides in article 3(1) that “the minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.” Nigeria ratified the *ILO Convention Minimum Age Convention, 1973 (no 138)* on 2 October 2002. It recognizes the minimum working age of 15 years in order to keep to the *ILO* recommendation of compulsory education for children until the age of 14 years as in article 2 (3) of the *ILO Minimum Age Convention no.138*.

The laws regarding minimum age for employment of children are inconsistent. Having domesticated the *CRC* and the *ARCWC* in the *CRA*, the *CRA* should be the supreme legislation in relation to children and the work they do. When the provisions of the *Labour Act* on young people are regarded as also applying to children there is

a conflict. While the *CRA* (section 28, 29, 277) restricts children under the age of 18 years from work, unless it is light work for family members, it still applies the Nigeria *Labour Act (1990)* which in article 59(3) allows employment of young persons under the age of 14 under certain circumstances. The *Labour Act* on working minimum age for children does not apply to children that are self-employed or work in the informal sector. Yet the *Labour Act* 59 (1) permits children of any age to do light work together with a family member in agriculture and domestic work. The amended *Trafficking in Persons (Prohibition), Enforcement and Administration Act 2015* (article 23) has notable features such as the prohibition of the employment of a child below the age of 12 years as a domestic worker.<sup>23</sup> There is lack of clarity and precision regarding the age of performing certain types of work. A common definition of what constitutes “light work” creates problem (Okoli, 2009). All these and more could suggest that children’s sector in the labour market is yet to receive adequate attention. There is a need to establish the right age for working children depending on the provisions of the existing structural framework. This will enhance child protection and development especially in developing countries like Nigeria.

Furthermore, it is suggested that the effectiveness of the children’s rights legislation to a great extent is dependent on the conception of childhood. The *CRC* conception of child labour is influenced by contexts and cultural underpinnings that do not fully take into consideration the socio-political, religious, cultural and economic advancements and status of member states. As Kaime (2009b:19) discovers in his study the “African’s Children’s Charter scheme of protection was greatly influenced

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<sup>23</sup> The offence of employing, recruiting, transporting, receiving or hiring out a child below the age of 12 years as a domestic worker is liable on conviction to imprisonment for a minimum of 6 months although not exceeding 7 years. It is considered a criminal offence.



by children's rights prescriptions in international law" which drew its image of childhood from the developed nations where children are exempted from family responsibilities and productive activities. This conflict in the understanding of childhood is present within the existing framework in which these rights are to be exercised and protected. It may be difficult as already observed therefore to gain the full dividends of children's rights in such a framework that does not support its concept of childhood. True to fact, this sort of image of childhood founded on the cultural realities of the western world is "a luxury that developing countries are unable to universalize in their current circumstances" (Kaime, 2009b:20). Kaime (2009) argues further that childhood should not be determined by fixed categories from psychological and biological perspectives as evidenced in the treaties from international bodies. Kaime (2009b) insists that great attention should be given to cultural and societal determinants as well, so as to have a culturally determined concrete and established process of applying the rights in order to realize more fully the benefits that are contained in the *ACRWC* within the African soil. The concept of childhood is not static but is always evolving; necessitating new horizons and needs as a result of current influences from diverse backgrounds.

It is upheld in Nigeria that some forms of work are meant to be part of a child's socialization process, which helps the child as well to develop "a sense of personal worth, pride and accomplishment" (Uzodike, 1990:85). It means therefore that not all forms of work done by children could be reckoned as exploitative child labour. Exploitative child labour has to do with all forms of work that in any manner adversely affect the child's opportunity to enjoy his or her fundamental human rights; it could be civil, political, economic, cultural or social right. Exploitative child

labour could be distinguished from dignified work by a number of determinant factors not excluding the type of work done, its nature and the conditions of the work. As such, elimination of unjust child labour does not mean the elimination of all types of work as performed by a child.

It is in this instance that the voices of Christian believers and especially the Catholic Church are needed to be heard speaking out against all forms of exploitation of working children. The challenge is to bridge the gap between these treaties and the existing framework in South East Nigeria, an area predominantly made up of Catholics. A contextualized response to child labour in South East Nigeria necessitates a theologico-legal child labour resource.

#### **4.6 The legal instruments for the protection of working children in Nigeria**

The three main legal instruments that this research examines namely, the *CRC*, the *ACRWC* and the *CRA*, are resolute in condemning economic exploitation of working children. Article 32 of the *CRC* recognises that children are victims of servitude in some parts of the world and firmly condemns the economic exploitation of working children. It prohibits all forms of risky work that might affect the integral development of the child. Article 32 (1) of the *CRC* provides that: “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” This article condemns work that is either “hazardous” or “interferes” with the child’s future and welfare. In article 32 (2), the *CRC* entrusts upon state parties the responsibility of enforcing this legal provision, establishing the

minimum age, conditions of employment and providing sanctions to ensure the implementation of this particular provision.

At the African regional level, the *ACRWC* reinforces the prohibition of exploitative child labour as provided by the *CRC* in article 15 (1). In article 15(2), the *ACRWC* emphasizes the implementation of this provision both in the formal and in an informal sector of employment. The *ACRWC* has mechanism for a Committee on Human Rights Protection to receive and review issues patterning to its Convention and to report their findings to the Assembly of the Heads of States and Government (Rehman, 2010). The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) was established in 2002 to enforce, monitor and ensure that state parties are faithful to their obligations under the Convention. The committee is empowered to visit states that may be violating its obligations of the treaty, receive state and individual reports, and take a stand before the African Court on Human and People's Rights. For example, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) published a report in March 2016 regarding their investigative mission in Tanzania about the alleged violations of the rights of children with albinism. The report captures that 72 people with albinism were killed while 30 others were attacked and their body mutilated. Their body parts are sold following a superstitious belief that their body parts possess magical powers. As a result, children live in fear and insecurity for fear of being kidnapped and killed. The ACERWC in its findings discovered that it violates the rights of the child as it is a physical attack on the right to life (articles 5 and 16 of *ACRWC*), right to health (article 14 of *ACRWC*), adversely affects right to registration and family tracing (article 6, 18, 18 and 25 of *ACRWC*), rights to education and recreation (articles 11

and 12 of *ACRWC*), right to adequate food, nutrition, accommodation, water and sanitation (article 14 of *ACRWC*). As a result of these violations, the *ACERWC* offered immediate measures, mid term measures and long term measures. Some of the immediate measures include government involvement in reconnecting the children in centres with the parents, and abolishing institutionalization of children with albinism. The government should step up the provision of health care to children with albinism. The Committee also called on the government to investigate the allegations against some members of the police and government officials who are thought to be involved in the sale of body parts of children with albinism. The government should sensitize the people on the situation of children with albinism as well as take up administrative and legislative measures to forestall the killing of albinos.<sup>24</sup> The *ACERWC* also investigated the situation of children affected by armed conflicts in the Republic of South Sudan and in the Central African Republic.<sup>25</sup>

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<sup>24</sup> Further details of the Investigative mission on the situation of children with albinism is Available at: [https://www.acerwc.africa/wp-content/uploads/2018/07/Investigative\\_Mission\\_on\\_the\\_Situation\\_of\\_Children\\_with\\_Albinism\\_A4.pdf](https://www.acerwc.africa/wp-content/uploads/2018/07/Investigative_Mission_on_the_Situation_of_Children_with_Albinism_A4.pdf) (Accessed 20/10/20).

<sup>25</sup> The *ACERWC* visited Central African Republic from 15-20 December 2014. The *ACERWC* visited South Sudan and had several meetings with government's officials, UN Agencies and Civil society Organization from 3-9 August 2014. The Committee visited the two countries with the main objective of providing answers and recommend solutions to improve the protection of children affected by the conflicts. The *ACERWC* assessed the impact of the armed conflict on children and identified the main capabilities and gaps in terms of resources for the prevention and solutions to be provided to children affected by armed conflicts. Details are available on *ACERWC* website: Advocacy Mission Sudan [https://www.acerwc.africa/wp-content/uploads/2018/11/Advocacy\\_Mission\\_South\\_Sudan\\_English\\_PAGES-ilovepdf-compressed.pdf](https://www.acerwc.africa/wp-content/uploads/2018/11/Advocacy_Mission_South_Sudan_English_PAGES-ilovepdf-compressed.pdf) and Advocacy Mission Central African Republic (CAR) [https://www.acerwc.africa/wp-content/uploads/2018/11/Report\\_ACERWC\\_Advocacy\\_Mission\\_to\\_assess\\_the\\_situation\\_affected\\_by\\_the\\_conflict\\_in\\_CAR\\_English-ilovepdf-compressed-2.pdf](https://www.acerwc.africa/wp-content/uploads/2018/11/Report_ACERWC_Advocacy_Mission_to_assess_the_situation_affected_by_the_conflict_in_CAR_English-ilovepdf-compressed-2.pdf) (Accessed 20/10/20).

This is not the case with the UN Committee on the Rights of the Child, as it is charged with the responsibility to receive and comment on the reports submitted periodically only. The *ACRWC* places the best interests of the child as a fundamental principle that modifies the interpretation of all rights of the child and all actions taken for the welfare of the child. The *ACRWC* further in article 15 enjoins state parties to legislate the minimum age for admission into employment and to publicly spread relevant information on the dangers of child labour. In addition, the treaty provides for the protection of children from harmful social and cultural practices in article 21. This article is not present in the *CRC* but is relevant to Africa as a result of its richness in cultural values and practices. Article 31 of the *ACRWC* in line with its African values and practices, contains some children's responsibilities to their families, society and the state employing their intellectual and physical abilities.

The *ACRWC* obliges member states to see to the distribution of “information on the hazards of child labour”, legislate on the hours and conditions of employment, the minimum wage to every employment and uphold the provisions of the International Labour Organization regarding child labour. A common understanding of what constitutes “hazardous” work is a problem in Nigeria (Okoli, 2009). The Federal Government of Nigeria through the Ministry of Labour and Productivity (MOLP) issued a *List of Hazardous Child Labour in Nigeria* (2013) to respond to the “alarming proportion” of child labour requiring national and international strategies. In keeping with the provisions of the *ILO Convention on Minimum Age No. 138* and the *ILO Convention on the Worst Forms of Child Labour No. 182* of which Nigeria is a signatory and aware of the consequences of child labour, it became necessary to

have a list of hazardous child labour clearly spelt out. MOLP in 2013 issued the list of hazardous child labour as follows; cocoa farming, rice farming and milling, quarrying, textile, domestic work and services, scavenging and recycling collection, street work, begging, transport sector, construction, all aspects of manufacturing, such as loading of raw material or finished products, handling chemicals and operation of mechanized equipment. However, the government has not yet determined by legislation the kind of hazardous work proscribed for children (USDOL, 2017). More so, it could be argued that some hazardous child labour are not included in the list, especially those that occur in the rural areas and the informal sector such as climbing of tall trees in order to harvest their fruits or pulling a bucket of water out of a deep underground tank.

Particularly, the *CRA* of Nigeria prohibits all forms of exploitative labour in section 28. Further in section 29 it refers to the provisions relating to young persons in Sections 59, 60, 61, 62 and 63 of the *Labour Act (1990)* as applicable to children under the *CRA*. Section 28 of the *CRA* provides that:

(1) Subject to this Act, no child shall be— (a) subjected to any forced or exploitative labour or (b) employed to work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character or (c) required, in any case, to lift, carry or move anything so heavy as to be likely to adversely affect his physical, mental, spiritual, moral or social development or (d) employed as a domestic help outside his own home or family environment.

This section makes an assumption that children are protected from exploitation when working for their family members (Okoli, 2009). This remains a matter of great concern especially in Nigeria where children's work is more in the informal labour sector (Ibanga, 2007).

Article 59(1) of the *Labour Act (1990)* re-echoes the provisions of the *CRA* section 28(1). The *Labour Act (1990)* in article 59(2) stipulates 15 years as the minimum age for employment or work in an industrial setting. Article 59(8) allows the maximum of four consecutive working hours or eight hours of work in a day for those under the age of sixteen. The *Nigeria Labour Act* has provisions for night work (article 60) and working in vessels (article 61). Though, the *Labour Act (1990)* has some provisions for working children but such provisions are insufficient for ensuring just working conditions for children.

There are some other laws and regulations that are related to child labour, such as; the prohibition of forced labour (*CRA*, 2003: Section 28; *Nigerian Constitution*, 1999:Article 34), prohibition of child trafficking, prohibition of commercial sexual exploitation of children, prohibition of using children for illicit activities, like street hawking and trafficking of illegal drugs (*CRA*, 2003:Section 30), compulsory education age and free public education (*CRA*, 2003:Section15; *Nigerian Constitution*, 1999:Article 18). The articulation and ratification of child labour legislation is not enough to prohibit child labour and other child-related offences. There is a need to explore and employ the services of institutions and agencies that will implement child's rights legislation, including the Catholic Church.

#### **4.7 Insufficiency of child's rights legislation in fighting unjust child labour**

As Bonnet (1993) discovers in his study on "Child Labour in Africa" a legal approach to child labour is quite inadequate to fully explore the subject matter in detail. He maintains that legislation is better applied in formal sectors like industries

and is unlikely to be applied and enforced efficiently to family businesses and domestic works. The fact is, Africa is not yet industrialized as the western nations and a good percentage of her economy is driven by the informal sector; domestic work, family business, and agriculture. Consequently, a totally legal appraisal of child labour in Africa would not relate to the real life experience of children in Africa since the economic activities where children are active are within the informal sector and are at times not within the view of the legal monitors (Bonnet, 1993). Moreover, the formulation of programmes and policies regarding child labour are based on researches carried out in the formal sector. There is also the practice of the formal sector subcontracting work to relations in the informal sector at a low cost and this indirectly promotes exploitation of children through child labour. Working children are rarely employed in the formal sector of the economy but in the informal sector where mainly the families or extended families are employers of labour. As such, the human rights legislation becomes inadequate in addressing child labour in this sector.

The *ACRWC* was the first African regional human rights instrument that identifies the African child as a possessor of certain rights specifically. Although, the *ACRWC* prohibits all forms of servitude including child labour, this has not stopped the pervasive economic exploitation of the African child. Article 18 of the *ACRWC* gives a precise definition of a child as “every human being under 18 years” unlike the *CRC* that has no attached limitations. In African contexts, as earlier mentioned, some factors will challenge the efficacy of the chronological age, such as physical maturity, initiation rites, authentic birth registrations and other traditional and cultural variables. Such unclear distinction of age in instances where the legal



specification does not agree with cultural demands or physical maturity in Africa could constitute a problem in enforcing the rights of working children in South East Nigeria.

Article 32 of the *CRC* deals with the protection of children's rights from economic exploitation, hazardous and harmful activities while regulating such works. It has been observed, however, that there was no specified age for admission to employment in the *CRC*. Article 15 of the *ACRWC* is very similar to the wordings of article 32 of the *CRC* with a few exceptions. Article 15 of the *ACRWC* widened the scope of protection to be accorded to the African child. This is based on the texts of article 15 of the *ACRWC* and article 32 of the *CRC*. While the *CRC* talks about protection from "exploitation" alone, the *ACRWC* seeks to protect the child from "all forms of exploitation". The *ACRWC* omitted to specify that the work must not "interfere with the child's education" and or be harmful to the child. This again seems to be a limitation on the *ACRWC*. It is evident that the socio-cultural identities of the African played much role in the formulation of the rights of the *ACRWC*.

The first child labour treaty to globally set standards applicable to children is the *ILO Minimum Age Convention* (no.38). The document called for the abolition of exploitative child labour like other treaties on child labour. It specifically calls on member states to design a national policy to fight against exploitative child labour and to progressively increase the minimum age on which a child could be considered for employment bearing in mind the mental and physical capacities of the child. As earlier noted, the ILO sets a minimum age for work at 14 years for developing countries and 15 years for developed countries. On "light work" for children,

however, the ILO maintains a minimum age of 13 and 12 years for developing and developed countries respectively. Section 28 of the *Child Rights Act of Nigeria* of 2003 prohibits all forms of “forced or exploitative labour”. As we have seen in article 32 of the *CRC*, article 15 of the *ACRWC* and article 28 and 30 of the *CRA*, clarity is needed in defining economic exploitation of working children. This necessitates the thrust of this research project; namely, to evolve a framework that will efficiently fight the pervasive and persistent exploitative child labour practices in South East Nigeria.

#### **4.8 Agencies for the protection of working children in Nigeria**

Nigeria has ratified legal instruments for the protection and welfare of children at the international and regional levels; namely the *CRC* and the *ACRWC*. It has domesticated these conventions by enacting the *CRA*. These legal instruments equip children with not only their fundamental rights but also oblige agencies and government institutions to protect those rights. Article 42 of the *CRC* enjoins all “states parties to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and child alike.” The Nigerian government established the National Human Rights Commission (NHRC) in 1996 to meet up with this obligation. The impact of this Commission is negligible. The provisions of the *CRC* are not widely known in some parts of the country, including South East Nigeria. Insufficient enlightenment on the protected rights in the *CRC* and the *CRA* has negatively affected the enforcement of child labour legislation and the achievement of the set goals, especially in rural areas of Nigeria. The implementation of the legal instruments and policies for the protection of working

children in Nigeria could be facilitated by resolving the discrepancies and gaps that militate against the protection of working children in Nigeria such as the disparity on the minimum age for employment and for hazardous work as provided for in the *Labour Act* of 1990 and the *CRA* of 2003.

Furthermore, there are agencies responsible for the enforcement of child labour laws in Nigeria, such as: the Federal Ministry of Labour and Productivity (MOLP) which is charged with the task of investigating child labour abuses across the 36 states of Nigeria and the Federal Capital Territory Abuja; the National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP) responsible for investigating trafficking in persons. There are other agencies that assist in enforcement of child labour legislation, such as Nigeria Police Force (NPF) responsible for the enforcement of all laws including laws prohibiting exploitative child labour and commercial exploitation of children and the Nigerian Immigration Service (NIS) that assist with the implementation of anti-trafficking laws, including child labour.

The Federal Government of Nigeria through Ministry of Labour and Productivity (MOLP) issued a *National Policy on Child Labour* (2013) as a response to the elimination of child labour especially its worst forms. It acknowledges in the “Foreword” that exploitative child labour “retards the physical, social, cognitive, moral and educational development of children” (*National Policy on Child Labour – NPCL*, 2013: iv). The MOLP also issued a *National Action Plan for the Elimination of Child Labour in Nigeria* (2013-2017) for the fight against child labour especially its worst forms. In its “Foreword”, it claims to present a “framework for the building

of synergy among stakeholders as well as defining roles and responsibilities in the intervention chain.” It acknowledges the multifaceted nature of child labour and asserts in the “Introduction” that:

Child labour is a fundamental multidimensional development concern. It cuts across economic, social, religious, cultural and regional divides. In the process, human dignity and human rights are compromised. Realistically, children in Nigeria have not been effectively shielded from this menace... Efforts towards the development of a National Policy on Child Labour (NPCL) and a National Action Plan (NAP) that will drive its implementation suffered some challenges but have now been finalised.

This acceptance of the multidimensional nature of child labour indicates that the involvement of religion and churches will be a move in the right direction. MOLP claims that with the *NPCL* and *NAP* in place, exploitative child labour issues in Nigeria will be effectively addressed. The pervasiveness of exploitative child labour in Nigeria after many years of this claim makes this assertion a future reality at best. In 2013, the MOLP inspection across the country employed the services of 882 factory inspectors and labour officers. This is an insufficient number for the 36 states of Nigeria and the Federal Capital Territory, Abuja. From January to November 2013, a total number of 8,441 inspections were conducted by the MOLP and 1,200 violations were recorded. Records did not show follow-up inspections, number of child labour law violations, and the number of factories closed down as a caution to the infringement of labour laws. There were no records of labour inspectors on seafaring vessels. This situation makes it uncertain if MOLP can efficiently enforce the legislation for the protection of working children in Nigeria (USDOL, 2014).

The National Agency for the Prohibition of Trafficking in Persons (NAPTIP) is a response by the Federal government of Nigeria in addressing the menace of trafficking in persons. On 13<sup>th</sup> December 2000, Nigeria became a signatory to the

United Nations Transitional Organized Crime Convention (UNTOC) and its Trafficking in Persons Protocol. It is in fulfilment of this international obligation that the NAPTIP was established in 2003. Article 5 of the Trafficking Protocol denounces all forms of exploitation including labour exploitation. As a result of the new trends of trafficking in persons, an amendment was made to the 2003 Act in 2005 in order to strengthen NAPTIP. The original 2003 Act was repealed and the new Trafficking in Persons (Prohibition), Enforcement and Administration Act 2015 received Presidential assent on 26<sup>th</sup> March 2015. The Trafficking in Persons (Prohibition), Enforcement and Administration Act 2015 (article 5e) among its functions insists that NAPTIP is to:

investigate all cases of trafficking in persons including forced labour, child labour, forced prostitution, exploitative labour and other forms of exploitation, slavery and slavery-like activities, bonded labour, removal of organs, illegal smuggling of migrants and sale and purchase of persons.

Child labour is included in the Trafficking in Persons (Prohibition), Enforcement and Administration Act 2015. NAPTIP therefore is charged with the fight against exploitative child labour. It is clear however that it is not the primary focus of NAPTIP. NAPTIP claims to be a multidisciplinary agency charged with the responsibility of coordinating law enforcement, protection and preventive initiatives in the area of human trafficking and related offences, of both Governmental and non-Governmental Organizations. However, there is no evidence to show that the impact of NAPTIP is felt much especially in rural areas and informal sector in South East Nigeria. NAPTIP claims to have “a modest strength deployed in eight states across Nigeria’s geopolitical regions which enables us to carry out our mandate in the 36 states of the country and the Federal Capital Territory” (NAPTIP, 2016). This “modest strength” of NAPTIP needs to prove its sufficiency to the problem it is

meant to resolve. NAPTIP has its headquarter in Abuja and zonal command in Lagos, Benin, Uyo, Enugu and Kano, Sokoto, Maiduguri and Makurdi. This number of zonal commands in Nigeria is inadequate for the whole country. It practically means that four commands, namely Lagos, Benin, Uyo and Enugu are to coordinate seventeen southern states. Strictly speaking, it means that only one zonal command in Enugu is within the reach of the whole of South East Nigeria. This structural approach is insufficient for the population of people in the area.

Sensitization programmes would be a helpful tool but has not been massively employed especially in rural areas of Nigeria. Follow-up campaigns would create an air of seriousness and strengthen ties with relevant local groups that would facilitate the realization of its goal since collaboration is a veritable tool in fighting child labour. There is a need to improve the capacity building for law enforcement officers of the Agency within the rural areas of Nigeria (NAPTIP, 2016). There is little involvement of the churches, especially the Catholic Church in the sensitization programme carried out by NAPTIP. There is a need to have a proper and defined relationship with the Catholic Church in order to increase capacity building for more efficiency, especially in South East Nigeria where Catholicism is a prominent faith group.

Evidently, among the agencies that participated in the rescue of victims as presented in the 2014 and 2015 NAPTIP reports, the Catholic Church was not included. Only government agencies such as NAPTIP, Nigeria Immigration Service, Nigerian Army, Nigeria Police, Department of State Services, Civil Defence, Non Governmental Organizations, High Commissions, Federal/State Ministry of Women Affairs,

International Organisation for Migration, Foreign Police, State Government, National Drug Law Enforcement Agency, Human Rights Commission were included. However, the Nigerian Police Force (NPF) is not well equipped to adequately enforce the child labour laws. The NPF is not trained on state laws and may not be well informed on the laws of particular states for the protection of working children. None of the other agencies is specially trained to enforce child labour legislation (USDOL, 2014). The Ministry of Women's Affairs and Social Development (MOWASD) is yet another child labour law enforcement agency that provides social services to children, but these services are not well coordinated. There are agencies at the state level that see to the implementation of the *CRA*. States are empowered to undertake other measures to eliminate exploitative child labour. For instance, Ondo State has a supervisory theme for cocoa plantation and Edo state prohibits children from working as bus conductors during school days. There is State Level Child Labour Task Force created to coordinate government's efforts on the implementation of child labour laws. Some states are known to have established child labour taskforce. *Inter alia*, state taskforce ensures that children attend school. Oyo and Ogun States have steering committees on child labour that facilitate the fight against exploitative child labour practices (USDOL, 2014). However, insufficient knowledge of child's rights legislation and lack of uniformity in ratification and enforcement of child labour laws among the 36 states of Nigeria limits the capacity of government and agencies in protecting working children from economic exploitation. Lack of seriousness in enforcement of child labour legislation in the various states may limit the efficiency of the enforcement agencies (Jones, 2011). Free movement across different states of Nigeria could enable commercial child trafficking within the country, especially when child labour legislations are not

taken seriously in some states. In addition, the United States Department of Labour research findings on the worst forms of child labour in Nigeria, avers that:

Although Nigeria has some programs in place to assist vulnerable and working children, the scope of these programs is insufficient to fully address the extent of the problem. Research found no evidence of programs to assist children engaged in agriculture, commercial sexual exploitation, domestic service, forced labour, illicit activities, or armed conflict.

(USDOL, 2004:7).

In 2017, findings on the worst forms of child labour reveals that Labour inspectors conducted 4,694 child labour inspections and found 606 violations. In a related matter on child labour, the National Agency for the Prohibition of Trafficking in Persons and Other Related Offences convicted 10 perpetrators of exploitative child labour. The report finally submits that notwithstanding these efforts children continue to participate in the worst forms of child labour, such as sexual exploitation, quarrying and gravel and granite, and armed conflict (USDOL, 2017). The report further asserts that the legal framework available in Nigeria for working children has many inconsistencies, the minimum age for work is below the international standard, and social programs are not enough to address the issue at stake. It also states that there are insufficient labour inspectors to cover the area. This report confirms earlier reports thereby implying that things have not greatly improved as regards protecting the rights of working children in Nigeria.

#### **4.9 The danger of treating child labour as a secondary problem and other lapses**

In Nigeria, there is no government agency specifically devoted to enforcing the rights of working children. As a result, child labour is often attended to along with



many other issues thereby giving it a secondary attention at best. Using the NAPTIP report on child trafficking as an example, it is evident that child labour was not the only concern of the agency. Children are trafficked within and outside the Nigerian territorial boundaries. Within Nigeria children are trafficked mainly as a result of poverty, children are trafficked into domestic service, street trading and commercial sexual exploitation for girls while the boys go into agriculture, street vending, mining, drug trade and other petty crimes. In 2015, the reported cases to NAPTIP are related to external trafficking for sexual exploitation, internal trafficking for sexual exploitation, external trafficking for labour exploitation, and internal trafficking for labour exploitation. Additionally, there are other cases such as illegal migrants, child labour, child abuse, kidnapping from guardianship, forced marriage, rape/sexual abuse, illegal adoption, baby sale, almajiri, missing child, abandoned child, brothel keeping, missing persons and violation of human rights. A total number of 570 cases were reported to NAPTIP. Out of the 570 cases reported, 203 cases were successfully investigated, representing 35.6% of the total number of reported cases. Child labour cases were 127 representing 22.3% of the total number of reported cases. Among the 127 cases reported representing 22.3% of the total number of cases, 42 were investigated representing 33.1% of the total number of child labour cases. There are no reasons given for the high percentage of cases that were not investigated. A comparison of child labour cases in 2015 and 2014 shows that in 2014 a total number of 134 cases were reported representing 22.2% of the total number of child labour cases. There is a slight increase by 0.4% in 2015 in child labour cases (NAPTIP Data Analysis Report, 2015). There is a further drop in the percentage of child labour cases investigated from 52.2% in 2014 to 33.1% in 2015. Overall, out of the 603 human trafficking cases and related offences reported in

2014, 298 representing 49.4% were successfully investigated and in 2015 out of the 570 cases reported, 203 cases were successfully investigated, representing 35.6% of the total number of reported cases. Such situation re-echoes the lapses and conditions that have been identified as militating against a fuller realization of the goal of child labour legislation. It could be seen that exploitative child labour is really a major problem in Nigeria owing to the fact that among the many child related issues reported, it has 22.3%. This notwithstanding, child labour issues have been treated in most organizations as a secondary issue and not the primary obligation.

It has been suggested that these lapses could partly be as a result of inadequate synergy among law enforcement agencies in the fight against exploitative child labour and the lack of adequate institutional capacities in the fight against exploitative child labour, such as manpower and other logistics (NAP, 2013). Generally, the accusations that child protection services in Nigeria are weak, its policy is not child-friendly enough, and the lack of child-sensitive social system seem not to have improved significantly (Jones, 2011).

Furthermore, among the total number of 1030 rescued victims of human trafficking and other related offences in 2014, child labour has the highest number with a total of 169, that is 32.9% of the total number of rescued victims. In 2015, there is a total number of 894 rescued victims in all the investigated human trafficking cases and other related offences, of which child labour has the highest number of rescued victims, 208. It is frightening to note that between 2014 and 2015, 416 children were rescued from child labour. There is no follow up information on the wellbeing of these children, which seem to be as a result of lack of time and resources as child

labour is not the only responsibility of the agency. NAPTIP mission statement claims that it works to prevent “all forms of human degradation and exploitation” and to “stamp out and uplift the vulnerable, especially women and children from dehumanizing and exploitative employment and usage; and to ensure their reintegration into society” (NAPTIP, 2016). There are evidences that NAPTIP is working to prevent exploitative child labour but there are no proofs to show that these children are properly reintegrated into their families and the larger society. This could also be as a result of inadequate attention given to child labour by the agency since child labour is not its only concern. Rehabilitation seems to be emphasized more on issues of trafficking in persons than on exploitative child labour.

Following a study carried out by MOLP some lapses have been identified and are yet to be properly addressed. It asserts that there is poor treatment of child labour victims as a result of inadequate infrastructure, lack of professional social workers and inadequate rehabilitation and intervention schemes that are counter productive (NAP, 2013). In so far as we continue to have child labour victims, it suggests that the problem of child labour persists in Nigeria. There is a need to diversify the institutions and agencies employed in the fight against exploitative child labour, in order to give it a fuller attention. The involvement of other agencies, especially the Catholic Church in providing a theologico-legal resource for the fight against exploitative child labour and preservation of the rights of working children in South East Nigeria will be an advantage.

Nevertheless, in 2015, out of a total number of 432 suspected traffickers, child labour has the highest number of suspected traffickers with 109 suspects; 40 males out of

219 males and 69 females out of 213 females representing 18.3% and 32.4% of all male and female suspects, respectively. A comparison of arrested suspected traffickers shows an increase by 18.2% in the number of arrested suspected traffickers in 2015. It could be suggested that due to the increase in the number of child labour traffickers, the factors that promote child labour have not been properly addressed. It could be that some of the lapses observed have not been adequately resolved. Some other lapses and gaps have been identified in the institutional arrangement in the fight against exploitative child labour. This is evident in the duplication of efforts in the fight against exploitative child labour resulting in poor implementation and coordination. There is a lack of Labour Market Information System (LMIS) for a reliable evidence-based decision-making. There is also a lack of child labour intervention mechanisms and proper coordination at the community and Local Government levels. Networking of information for the fight against exploitative child labour is inadequate. MOLP identifies further that there is insufficient information between the donor agencies, coordinating entities, implementing partners and the vulnerable groups. There is a lack of financial resources for child labour interventions, inadequate information and enlightenment programme on child labour. Some have continued to see child labour as a global problem than a national issue that requires national and urgent attention. There is a poor coordination of poverty alleviation schemes, the lack of social security and poor population control (NAP, 2013). More so, there are gaps in monitoring, evaluation and reviews. There is insufficient or out-dated information of child labour incidences in Nigeria. There is no monitoring and evaluation system, and qualified personnel to manage it for efficiency (NAP, 2013). For effective child labour planning, report and intervention, there is a need to have up-to-date information. The *National Child*

*Labour Survey 2000/2001* has been the major source of data for child labour in Nigeria. It is evident that there is no government institution specifically established for the welfare of working children capable of coordinating other agencies that are totally dedicated to the fight against exploitative child labour and protection of the rights of working children in Nigeria. The lack of such establishment makes it more difficult to fight exploitative child labour, as the resources and information needed for effective implementation of child's rights legislation vis-à-vis child labour are not available.

#### **4.10 Concluding remarks**

Based on the current situation of working children and implementation of child labour legislation in Nigeria, one wonders if the mission of the 2013 *National Policy on Child Labour* article 4.4, namely: “(a) to eliminate child labour in its worst form so as to give every child an opportunity to aspire and attain the apex of his/her potentials”, and “(b) to have a just society devoid of any form of child exploitation and abuse, where the child's talent is allowed to develop unfettered” could be achieved within the specified time. More so, the ultimate goal of the *National Policy on Child Labour* as stated in article 4.5.1, namely to “provide a legally binding, and standardized guidelines for actors implementing the national programme on child labour, especially its worst forms, towards a drastic reduction of its prevalence in Nigeria by 2015 and total elimination by 2020” seems unrealistic. The target to totally eliminate exploitative child labour appears over-ambitious owing to the current situation of working children and how child labour cases are managed in Nigeria. The fight against exploitative child labour will not be achieved by legislation alone. Contextually sensitive child labour legislation that accommodates

existing social frameworks and offers protection to working children will be a viable approach in member states that struggle with peculiar socio-political, economic and cultural challenges.

Working children in South East Nigeria and beyond would benefit more from a distinction of child labour/work from exploitative child labour (NPCL, 2013; Liebel, 2004). The emphasis on exploitative child labour beclouds the dignity of children's work in Nigeria and diminishes the urgency and relevance of promoting just working conditions for children. As Nigeria matures and improves its legislation and enforcement of child labour laws, non-governmental agencies especially the Catholic Church has an important contribution to make. Christianity is deeply rooted in Nigeria, especially in the South East Nigeria. As a result of the inadequacy or lack of an efficient social welfare system, the researcher argues for a more positive and diversified approaches to working children in South East Nigeria through the inclusion of the Catholic Church in promoting a safe environment for working children. The emphasis has been more on the fight against exploitative child labour than on providing protection to working children and ensuring they enjoy just working conditions. This research seeks to offer support to child labour legislation by providing a theologico-legal resource that would be of benefit to the welfare of every Nigerian working child, especially in South East Nigeria where the greatest population is made up of Catholic Christians and similar contexts.

## CHAPTER 5

### THE CATHOLIC CHURCH AND NATURAL RIGHTS TRADITION – HISTORICAL PERSPECTIVES

#### 5.1 Introduction

The previous chapter discussed the legislative framework of child labour in Nigeria. The relevant universal human rights instrument examined was the United Nations' *Convention on the Rights of the Child* of 1989 (hereafter *CRC*). The *CRC* recognizes that every child has the dignity of a human person and attributes the fundamental rights of a person to every child. The human and personal dignity of a child as promoted by the United Nations is based on the fact that children are human beings and have personal liberties. However, the goal of this research is to evolve within the understanding of Catholic social teaching, a theological framework that is founded on natural rights tradition, a tradition that recognizes that children are created in the image of God, naturally endowed with personal dignity and have certain inalienable rights that promote the common good. A human rights tradition that is properly situated within the natural rights foundation is imperative for the emergence of an effective Christian theological resource for the welfare of working children in South East Nigeria.

This chapter seeks to explore the historical development of human rights in the Catholic Church. The first section gives particular attention to the relevance of the medieval natural law to the emergence of natural rights. Emphasis will be laid on how the collation of canon law known as *Decretum* by a Benedictine monk Gratian in the twelfth century contributed to the study of law and the development of natural rights. It ponders on the absence of natural rights theory in the works of one of the

foremost medieval scholastics and Italian Dominican theologian, Thomas Aquinas (1225-1274) in the thirteenth century. Further, this chapter offers a brief account of natural law and natural rights history within the apostolic poverty debate of the Franciscan order that started in the late thirteenth century up to the mid-fourteenth century, and the contributions of the Spanish theologian, Francisco de Vitoria (1486-1546) to natural rights discourse in the sixteenth century. The second section focuses on the conflicts between the Catholic Church and modern understanding of rights as typified by the French Revolution. It examines the use of the language of rights by the Popes from the period of the French Revolution in 1789 to the pontificate of Pius XII (1939 - 1958). The last section proposes the relevance of natural rights tradition to the modern human rights and child rights discourse. It evaluates the insistence of Catholic social teaching on natural rights tradition in the new era of rights, after the cessation of the anti-clerical stance that characterized earlier secular liberal rights, from the period of John XXIII (1958 - 1963) to the post-Vatican II era, including the contributions of John Paul II, Benedict XVI and Francis. It further acknowledges that the Catholic Church has embraced modern human rights with ambivalence. The Catholic Church upholds that rights are based on the human person with personal dignity as created in the image of God.

## **5.2 The relevance of the Medieval natural law tradition to the emergence of natural rights**

### **5.2.1 The Medieval canonists of the 12<sup>th</sup> century**

The Medieval society shaped by Christian ethos was the context that prepared the emergence of natural rights. Canon law studies in the twelfth century played a vital



role in the shaping of the rights discourse that continued with the scholastic philosophers of the thirteenth century (Tierney, 1997). This section evaluates the development of the natural rights tradition from the twelfth century onwards.

There was a revival of legal studies with the influential work of Gratian on church law around 1140. This work initially called *Concordia discordantium canonum* (“A harmony of conflicting canons”) was later renamed “*Decretum*”.<sup>26</sup> It was a collection of about 3800 texts relating to church discipline and regulation. The work was designed to harmonize many inconsistencies in the doctrinal teaching and legislation of the Catholic Church. The *Decretum* was more than a compilation of church laws. It made references to the works of the church fathers, early ecumenical councils, early church history, Roman law, and even contained a wide range of reflections and commentary. It was a relevant resource material during the codification of canon law in 1917 and 1983.

Gratian’s *Decretum* was the text used in teaching canon law at universities across Europe in the twelfth century (Bologna, Naples and Paris). It was an interesting study as canonists were doing more than explaining church laws. Canonists also engaged in developing laws for universal application, especially for Church administration in developing mission fields. The study of canon law influenced how States codified certain aspects of law, although canon law was studied alongside the

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<sup>26</sup> Gratian’s *Decretum* was written in Latin. However, there is an English translation of the first twenty distinctions of the *Decretum* which comprise a treatise on law in general, and a discussion on the nature of law, voluntary action, and the power of popes, bishops and secular authorities. It also has a translation of the commentary on the distinctions, called the ordinary gloss. Gratian’s *Decretum* is divided into two main sections, the *Distinctiones* and *Causae*. The *Causae* is further divided into *Questiones*. See Gratian (1993) *The Treatise of Laws With Ordinary Gloss*, trans A. Thompson and J Gordley. Washington: The Catholic University of America Press.

Roman Law such as *Corpus Iuris Civilis* compiled by Justinian in the 6<sup>th</sup> century.

One example is that Roman law on civil procedure was influenced by Church's hierarchical appeal procedure (Waelkens, 2015:97). This new approach to legal studies in the twelfth century drew many medieval intellectuals to the law school of Bologna, Italy. The *Decretum* was at the centre of legal studies at Bologna. Canon law students at Bologna wrote commentaries, and the commentators were known as "decretists".

There were questions on the shortcomings of the *Decretum*. The decretists in their commentaries offered solutions to the shortcomings they observed in the *Decretum*. At this time, rights discourse took a new trend. One of the shortcomings of the *Decretum* was its use of the term *ius naturale*, inconsistently (Tierney, 2004). Gratian, for instance, states that by natural law all property was common while insisting that any law contrary to natural law was null and void. This made it impossible to lay claim to property in the real world. It became clear to commentators that he attached several meanings to the term *ius naturale*, which were sometimes contradictory. Gratian uses *ius* to describe systems of objective law and regarded natural law, civil law, customary law, public law and military law as different types of *ius* (Reid, 1998:444). Gratian never reconciled the divergent meanings of *ius naturale*. The *Decretum* states:

The human race is ruled by two (means) namely by natural law and by usages. Natural law (*ius*) is what is contained in the Law of the Gospel by which each is commanded to do to another what he wants done to himself and forbidden to do to another what he does not want done to himself.<sup>27</sup>

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<sup>27</sup> Gratian, *Decretum*, Dist. 1, dictum ante c.1.

One cannot claim that Gratian defined natural law in a subjective sense. However, it is obvious that for Gratian, natural law is founded on the Gospel and on God. Natural law therefore has a divine origin and is the moral basis for natural rights.

To respond to this type of inconsistency in the *Decretum*, the decretists and other canonists invented new meaning of subjective rights, *ius naturale* that was not contained in the *Decretum*. The decretists presented several definitions of *ius naturale* as subjective rights that developed in the twelfth century. Initially, the use of rights in a subjective sense did not refer to specific rights. However, *ius naturale* came to be understood in a subjective term to mean power or faculty, “an ability rooted in human reason and free will to discern what was right and to act rightly” (Tierney, 2004:6). The understanding of the old natural objective law in a subjective sense opened the avenue for further development of the concept into specific individual natural rights. The connection of “natural rights” to “natural law” with its divine origin is relevant for this research seeking to proffer a theological resource for the protection of working children.

The canonists’ subjective definition of *ius naturale* is not opposed to the objective natural justice of the natural law tradition. There evolved an idea of natural law that does not oppose natural rights. Though one cannot claim that the idea of natural rights in modern times developed from the decretists, it is to their credit that they formulated a permissive natural law. The permissive natural law tradition holds that though natural law commands and prohibits action, it also allows freedom of action and rights to act as one chooses within the margins of natural law. The canonists thus created a juridical system that allowed mutual existence of individual rights with the

common good. Tierney asserts that in the medieval times,

individual values and community values do not have to be in conflict with one another. They can exist in a state of synthesis, even a synergy. Medieval people seem to have known intuitively that individuals flourish best in healthy societies. The first right theories were not necessarily in conflict with the communitarian values of traditional societies.

(Tierney, 2004:12).

The language of natural rights gradually became a theme in Western political thought. There were many other thinkers who made various contributions to the development of natural law, one of whom was Thomas Aquinas. The next section briefly examines Thomas Aquinas' natural law theory in order to ascertain the sense in which he used the term *ius* in his writings.

### **5.2.2 The absence of natural rights theory in Thomas Aquinas**

Although, Thomas Aquinas (1225-74) is regarded as one of the great minds and foremost scholastics of the medieval era, he did not develop a theory on natural rights. He uses the language of rights but in a sense that is different from the manner it is used in natural rights tradition. He uses the term "*ius*" or "*right*" to refer to an objective reality. Aquinas uses "*ius*" interchangeably with "*lex*" or "*law*" which refers to the rational expression of the objective reality.<sup>28</sup> For Aquinas, "Rights is the object of justice"<sup>29</sup>. However, from a more modern perspective, Aquinas also describes the objective reality in relation to personal relations and positions within the society. Aquinas uses the term "right" in both objective sense and subjective

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<sup>28</sup> Aquinas, T. (1947) *Summa Theologica*, 2a, 2ae, q. 57, art. 1, trans. Fathers of the English Dominican Province, 3 vols. New York: Benzinger Brothers, 1947. (Henceforth, Aquinas, *Summa Theologica*).

<sup>29</sup> Aquinas, *Summa Theologica*, 2a, 2ae, q. 57, art. 1.

sense. In an objective sense, Aquinas states that “the act of justice in relation to its proper matter and object is indicated in the words, ‘Render to each one his right’”.<sup>30</sup> This implies that all relations, whether to oneself or to the other persons, are to be well ordered so as to reflect that which is right. Its subjective use refers to personal moral claims and necessarily relies on its objective use. Personal moral claims refer to the legitimate claims or entitlements due to particular persons as a result of their moral positions, privileges or powers. Invariably, not all the claims are proper since some are by their nature illegitimate. An example of an illegitimate claim is that a slave “has no right to rebel” against his master.<sup>31</sup> It is an illegitimate claim by slave masters and their supporters. The objective elements of justice limit the claims a person can make. As such, personal rights have meaning only in reference to objective right. By implication, therefore, some persons can or cannot make claims to some rights in relation to their positions, privileges, powers or moral positions. The justification for these claims, according to Aquinas, is rooted in the authority of God, and so, does not depend upon the autonomous authority of the individual or the particular law of the society. The object which justice pursues is the right of a person in relation to other objects. This natural law is given to all human persons, as it is universally intelligible.

For Aquinas, the realization of personal rights is dependent on the fulfilment of duties by others. It could be described as “passive rights” in contrast to the “active rights” based on the agent’s liberty and sovereignty over the moral world. It follows that:

Rights based on social position are “rights *in personam*” in that they are

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<sup>30</sup> Aquinas, *Summa Theologica*, 2a, 2ae, q. 58, art. 1.

<sup>31</sup> Aquinas, *Summa Theologica*, 2a, 2ae, q. 58, art. 2.

related to the positive duties of specified persons. Such duties necessarily benefit the claimant. This conception of rights contrasts (with) “rights *in rem*,” that is, rights related to the general duties of all persons from harming others. Rights of liberty that so characterize modern rights are rights *in rem*”.

(Brady, 1993:107).

So, the contemporary use of the term “human rights” is different from Aquinas’s understanding of rights. Aquinas’s understanding of rights does not fit into the category of the universal rights that can be given to all human beings just because they are human beings. Aquinas’s understanding of rights is presented as “benefits” and not as “liberties” of modern human rights. Consequently, it does not propose a universal equality of all persons. Since the subjective rights as proposed by Aquinas neither have universal application nor recognize the equality of all human beings, it is not clear if children’s rights would receive sufficient promotion in his understanding.

Notwithstanding the fact that Aquinas has no theory of natural rights, natural rights tradition continued to develop during the medieval era. As Tierney (2004: 8) discovers in his studies, by the year 1300 “some natural rights were coming to be recognized – the right of the destitute poor... a right of self-defence against physical assault or in a court of law, rights in marriage, even rights of infidels.” The medieval natural rights promote equality of all persons and are not in conflict with common good of the society. Natural rights evolved from the natural law tradition and so uphold the characteristics of natural law, including its divine justification. Natural rights seen as based on God, a theological foundation promises to offer the needed backing to children’s rights in a theologically sensitive context such as the South East Nigeria. Natural rights have universal application and are not restricted to particular privileged persons as is the case with Aquinas’ notion of rights *in*

*personam*. The next section shall show how the language of rights and natural rights tradition developed in late medieval period, using the Franciscan poverty debate as an example.

### **5.2.3 The Franciscans' Apostolic poverty controversy**

St. Francis of Assisi founded the Franciscan order. In 1206, St. Francis of Assisi had a vision where Jesus demanded a radical poverty and detachment from the world as recorded in the Gospels. In his early life, Francis was a soldier and enjoyed partying. He abandoned this lifestyle and formed a group of followers who embraced poverty. Francis and his followers (Friars Minors) lived in severe deprivations of material things. Before he died in 1226, he left his followers a Rule that specified that their apostolate was to be sustained by freewill donations. The Friars Minors preached the Gospel all over Europe. They had nothing for themselves since the life of poverty demanded of them was meant to be absolute.<sup>32</sup>

After Francis's death, the Franciscan Friars struggled with the practical meaning of absolute poverty in the face of their daily necessities of life. They sought to understand if they have some rights to own clothes, food, chapel and other basic needs.

The dispute arose out of the Franciscans' claim that they had abandoned all property "singly and in common" and all right to use property, retaining for themselves only a "bare factual use" of things. The Franciscans further claimed that by living in this fashion they were faithfully imitating the perfect

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<sup>32</sup> For further reading on the life of St Francis of Assisi, see Jacques Dalarun and Timothy Johnson (2016) *The Rediscovered Life of St. Francis of Assisi* Thomas of Celano. New York: The Franciscan Institute Publications

evangelical way of life instituted by Christ and the first apostles.  
(Tierney, 2004: 8).

It is within this context that the use of the language of rights became popular and developed further. It is claimed that “the first true natural rights theory, that is, a theory of active rights justified on claims an individual can make in the state of nature, can be found in the intense ecclesiastical debate concerning apostolic poverty” (Brady, 1993:108). The debate which started in the late thirteenth century up to the mid-fourteenth century, became the object of engagement among the Franciscans, the Dominicans, and the papacy especially Pope Nicholas III and Pope John XXII. Notable among the Franciscans were Bonaventure, Duns Scotus and William of Ockham. Meister Eckhart, a Dominican upheld Thomistic traditions.

#### **5.2.3.1 Popes Nicholas III and John XXII contributions to development of natural rights**

Some papal documents issued from the 1230s to the 1270s use the term “rights” to provide a solution to the Franciscan’s quest for clarity. The use of language of rights by the popes encouraged the use of the language of personal rights by commentators and debaters (Reid, 1998: 449). For example, Pope Nicholas III in his bull *Exiit qui seminat* of 1279 justified the apostolic poverty of the Franciscan order. *Exiit qui seminat* maintains that the demand for absolute poverty conforms to the rights to use of goods. Nicholas III in this way separated the “right to use of things” from its “ownership” and held that it conformed to the evangelical life of Jesus and his apostles. Nicholas III states:

Nor may anyone on account of these things erroneously assert that those who abdicate property [over] all things according to God in such a manner, bring about their own homicide or make themselves into tempters of the living



God: for thus they entrust themselves to Divine providence in living so as not to condemn the way of human provisions, but rather they sustain [themselves] both on these things which are offered freely or those which are begged humbly or those which are acquired by labouring...But such an abdication of property this does not seem to lead to a renunciation of the use of things in every case for anyone.

(*Exiit qui seminat*, 8).

On the contrary, John XXII (1329) in the bull *Quia vir reprobus* refuted the arguments that supported the Franciscan poverty by refusing to separate “use” from “the right of use”. John XXII while applying the language of rights insists that it is not possible to separate the simple use of things from the right to use them. In this way, John XXII insists that the use of anything by anyone for whatever reason must at the same time come with the right to use it. The papal stance rejects the understanding of rights that distinguishes between “use by necessity” and “use by right”.

Tierney reflecting on the reason behind John XXII’s stance suggests that: “Perhaps the pope saw that, if the Franciscan claim were true, then the church never had exemplified an evangelical way of life, for it had always owned property” (2004:9). This debate led to many other instances where the word *ius* was given a subjective meaning.

This is a complicated argument that could be further analysed, but the main point the researcher makes is that the language of natural rights was part of this medieval discourse.

### 5.2.3.2 The Conciliarists and further development of natural rights

There was a further development of the concept of natural rights in the medieval times. The Great Schism of 1378 that decimated the Catholic Church used the language of rights in addressing its challenges. This was a time in history when the Catholic Church had three popes contesting for legitimacy. The Conciliarists, that is, those who believed in the supreme power of the Ecumenical Council over the pope promoted a parliamentary system of government. Their view was that the Ecumenical Council should decide and work out who should be the legitimate pope and resolve other controversial issues. It was finally at the Council of Constance in 1413 that the conciliarists removed the rival claimants to the papacy, and installed Martin V as the new pope. “The conciliar theory in some respects presented an organic conception of society, but it became a coherent theory of governance precisely because of the rights the representatives of Christendom brought with them when they assembled in council” (Reid, 1999:457). The rights possessed by the representatives to the ecumenical council are natural rights. Natural rights empower decisions of the Ecumenical Council for the whole Christendom.

It must be noted that there were other reflections that employed the language of rights, such as those by Jean Gerson, John Wycliff and John Mair, amongst others. For the purpose of this study the next section focuses on the contributions of Francisco de Vitoria to the development of natural rights during the persecution of the Mexicans by the Spanish *conquistadores*.<sup>33</sup>

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<sup>33</sup> “Conquistador” is a Spanish word for “conqueror”. It refers to any of the leaders in the Spanish conquest of America, especially Mexico and Peru in the 16<sup>th</sup> century. The conquest of Aztec Mexico was led by Herna`n Corte`s while the expedition

### 5.2.3. 3 Francisco de Vitoria's contributions to the natural rights discourse <sup>34</sup>

Francisco de Vitoria (1486-1546) was a Spanish theologian who fought in defence of the rights of the Mexicans against the Spanish colonists, the *Conquistadores*. While responding to the attack of the *Conquistadores* on the Mexicans, Vitoria insists that all persons irrespective of status have a common universal inheritance as rational beings created in “the image of God.”<sup>35</sup> He argues that classifying people as barbarians or heretics and treating them unjustly is wrong just as it is wrong to treat the Spanish unjustly. Just as the Spanish and all other persons all over the world, including the Mexicans possess the faculty of reasoning which “enables humans to have *dominium* over their actions and thus *dominium* over temporal goods”, so too the Mexicans have *dominium* over their actions and goods (Brady, 1993:113). Vitoria cites Aquinas in support of his stance that reasoning gives human beings special power to make rational choices. “Our proposition is also confirmed by the authority of St. Thomas Aquinas (*Prima Secundae*, qu.1 art.1 and 2, and *Contra*

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against Inca Peru was led by Diego Almagro and Francisco Pizarro. For further reading visit – <https://www.britannica.com/topic/conquistador-Spanish-history> (Accessed 15/3/2019).

<sup>34</sup> In 1492, the discovery of many lands previously unknown to the Europeans by Christopher Columbus, an Italian navigator opened up a wide area in the exploration of the world. Spanish explorers came in contact with the Mesoamerica known currently as Mexico in the 1510s. Between 1519-1521, the Spanish *conquistadores* took over Mexico through the military subjugation of the Aztec rulers of central Mexico. Peru was also taken over by the Spanish *conquistadores* around the same time, in the 1530s. Notwithstanding the ravaging diseases that killed a lot of the native people, the remaining people were put to work. The Spanish authority greatly persecuted the Mexican populations and forced them to work. This oppressive treatment created by the Spanish authority ignited a great debate. Francisco de Vitoria and Bartolome` de Las Casas, argue in favour of the Mexicans (Reid, 1998). Both Vitoria and Casas developed a doctrine of natural rights.

<sup>35</sup> Francisco de Vitoria (1917) *De Indis et Iure Belli Reflectiones*, ed. Ernest Nys, trans. John P. Bate, The Classics of International Law, ed. James Scott. Washington, DC: Carnegie Institution of Washington, 127. Henceforth (Vitoria, 1917).

*Gentiles*, bk. 3, c. 110), to the effect that only rational creatures have dominion over their acts...”(Vitoria, 1917:126). In this way, Vitoria defended the Mexicans’ rights to property and self-governance, insisting that since the Mexicans already demonstrated the use of reason in constituting their social system, such as marriage and governing authorities, they too should have the same rights as other Europeans. Thus, through a synthesis of the juridical concepts of law drawn from the canon law with the natural law philosophical tradition, Vitoria was able to defend the rights of the Mexicans to sovereignty, equality and their right of ownership of land. The “outcome of Vitoria’s argument was that all human beings – sinners, infidels, children, even natural slaves... - could be bearers of rights and did possess certain natural rights...For Vitoria, natural rights were rooted in human nature, not in the nature of the external world”(Tierney, 1997: 271).

Vitoria sees the whole world as politically organized under natural law and universal common good. Thus, he widened the horizon of rights claim beyond traditional national borders and also defended claims made from objective justice and equity. Vitoria’s understanding of a universal positive law that was to govern relations between states was a significant contribution to modern law, just as civil law governs the actions of individual persons in a state. Natural law confers natural rights. According to Vitoria, “there are many things in this connection which issue from the law of the nations, which, because it has significant derivation from natural law, is clearly capable of conferring rights and creating obligations (Vitoria, 1917:153). Vitoria’s recognition of objective moral order led to a more universal concept of rights based on common rational faculty shared by all persons universally and on the common origin of all persons as created in the image of God (Brady, 1993:113).

Vitoria made a clear connection between natural permissive law and natural rights. Vitoria holds that natural law permits natural rights; making natural law the ground for natural rights. Vitoria and his contemporaries in Spain made notable contributions in the sixteenth century's expansion of the natural law and natural rights. Remarkably, Pope Benedict XVI in his address to the United Nations in 2008 describes Vitoria as "a precursor of the idea of United Nations" as a result of his contributions to modern international law (Benedict XVI: 2008).<sup>36</sup> The following section claims that although the modern secular liberal rights' development is rooted in rights tradition, it has created tensions between the Catholic Church and secular liberal rights tradition.

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<sup>36</sup> Benedict XVI (2008) *Apostolic Journey to United States: Address of the Holy Father to the General Assembly of the United Assembly of United Nations Organization in New York (April 18, 2008)*. Available at: [http://w2.Vatican.va/content/benedict-xvi/en/speeches/2008/april/documents/hf\\_ben-xvi\\_spe\\_20080418\\_un-Visit.Html](http://w2.Vatican.va/content/benedict-xvi/en/speeches/2008/april/documents/hf_ben-xvi_spe_20080418_un-Visit.Html) (Accessed: 25/01/2016).

### **5.3 Conflicts between the Catholic Church and modern understanding of rights<sup>37</sup>**

#### **5.3.1 The French Revolution and the emergence of secular liberal rights**

From the foregoing discussions, it is evident that the Catholic moral thought prior to the seventeenth and eighteenth centuries contains some aspects of natural rights. The medieval natural rights tradition was used to defend the individual rights of the oppressed without being in conflict with the general good of the society. The medieval natural rights that evolved in the European Christian world defended the dignity of every human person. Natural rights were employed in addressing the social injustice and oppressive civil and religious structures. In France, following the oppression of the non-privileged minority by some privileged nobility who are associated with the Catholic clergy, a new expression of rights emerged in the

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<sup>37</sup> It is to be noted that before the period of Enlightenment, moral, social and political values were expressed in the language of rights founded on the natural law, as an objective and universal moral order. The natural law was associated with Christianity and the Catholic Church. The basic understanding then was that “people had duties to one another and to God; rights were derived from the duties we owed one another under God” (Langlois, 2013:12). Beyond the sixteenth century, there was a persistence of permissive natural law that asserted the right to obey the law and also left a vast area of human conduct that are not determined by its commands and prohibitions (Tierney, 2005:40). The permissive natural law continued into the seventeenth century. In mid-seventeenth century, as natural rights developed over the centuries, they differed in some ways from the modern notions of international legal order and human rights (Carozza & Philpott, 2012). The emergence of a new meaning of natural rights differs from the earlier understanding of Catholic rights founded on the human dignity and unity of human family that share in the common good, having been created in the image of God. Historically, it has been suggested that natural rights are understood to have emerged from the natural law tradition. Considered from the perspective of “intellectual currents of positivism and subjectivism that provide philosophical justification for rights claims today, the natural-rights move appears as a radical departure from the natural law moral reasoning” (Belz, 2003:8). It is to be noted that modern secular rights which allows claim to rights based on “subjective freedoms and liberties of individuals rather than objective right (the divinely sanctioned moral order of the day) is associated with the long development of the idea of individual liberty, culminating in the Enlightenment” (Langlois, 2013:12).

modern period. This section briefly explores the events surrounding the French Revolution. The purpose is to investigate the understanding in the use of rights' language by the Popes during the period of revolution and afterwards.

The French Revolution initiated a conflict between the Catholic Church and the natural rights movement. The Catholic Church was closely affiliated to the French monarchy, and became an object of attack during the Revolution. Anticlerical and anti-Catholic activities were rampant. The natural rights movement was projecting a liberal concept of rights that was opposed to the Catholic Church and her priests (Williams, 2005). The French Revolution was unique in the history of revolutionary movement during this period. It differs in its motivation as well as its categories of rights when compared to the American Revolution that happened earlier, 1775 - 1783. The French Revolution took place in 1791. The French revolutionaries were in pursuit of "liberty, equality, and fraternity" so that a just and classless society, and the "rights of man"<sup>38</sup> would be enthroned in order to dethrone the old order of oppression (Mondal, 2017). The American Revolution deals with rights associated with established rights and institutions. It relies solely on what has always characterized the Western culture and existence. The *American Declaration of Independence* 1776 was a reflection on theories that were already known. It appealed to natural rights and ultimately to divine origin, bestowing on it an immutable nature and foundation. This declaration announced the separation and independence of thirteen North American colonies from Great Britain.

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<sup>38</sup> It is to be acknowledged that the use of the term "man" instead of human being in the "rights of man" is not all-inclusive. I argue here that feminist thinkers may not agree with this idea and its formulation.

The beginning of the French Revolution was associated with French soldiers who fought on the side of the Americans during the American Revolution and later returned to France to celebrate the victory of the American revolutionaries that gained their freedom with the endorsement of the *Declaration of Independence* in 1776. The returnee French soldiers met France at the breaking point due to its poor economy and oppression of the poor by the rich and the powerful. The Estates-General, that is the traditional assembly, comprising of three “estates”, led the French polity. The Estates-General was made up of the clergy and the nobility – which were the privileged minorities; and the Third Estate, which represented the non-privileged classes. These returnee soldiers, encouraged by the success of the American revolutionaries, joined the representatives of the Third Estate made up of the peasants and the willing middle-class to go on protest. The protesters progressed from the streets of Paris to the indoor Tennis Court. They thought that King Louis XVI was forcing them to disperse, as they were locked out of their usual meeting hall at Versailles. It was at the Tennis Court that the Third Estate General came together and pronounced that it constituted the National Assembly, and threatened to go ahead with their meeting without the clergy and the nobility. Within a few weeks, the revolutionary movement spread and supporters took to the streets and went to the Bastille, their symbol of royal tyranny. It was as a consequence of this that the leaders of the revolution drafted the 1789 *Declaration of the Rights of Man and of the Citizen* (hereafter *DRMC*). This brought about the elimination of absolute monarchy and the beginnings of the first French Republic.

This declaration has proven to be a significant rights document of the eighteenth century. It affirms the principles of the new state based on universal laws and



principles, promoting *inter alia* equal individual citizenship and the sovereignty of the people as a group. With the adoption of *DRMC* by the National Constituent Assembly, a new state based on universal norms of “liberty, equality and fraternity” was formed (Ishay, 2008:74).

Without endorsing the secular liberal nature of the language of rights used within the era of the French Revolution, it is worthy of note that secular liberal rights were borne out of injustice and were fashioned to protect the weak from the powerful. The earlier natural law foundation for rights weakened during the Enlightenment period as a result of decline in allegiance to Christianity and Christian theism (Langlois, 2013). Early critics of natural rights include philosophers of different extractions namely, conservatives, socialists, liberals, and proponents of utilitarianism. It is such historical conceptions coupled with the evil of the Holocaust that laid the foundation for modern human rights. The French Revolution affected the Catholic Church and papal statements during the era vis-à-vis the use of the language of rights. We shall in the next section briefly explore how this affected papal statements beginning with the encyclical of Pope Pius VI in 1791.

### **5.3.2 The Catholic Church and secular liberal rights**

The French Revolution initiated the idea of the civil constitution of the clergy whereby the Catholic Church would be controlled by the French government. Civil constitution of the clergy is based on article 3 of the 1789 *DRMC*, which states that: “The principle of all sovereignty resides in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation.” This

legislation limits the authority of the Catholic Church, since all power resides in the state. Pius VI (1791) in his encyclical, *Charitas* opposed the civil constitution of the clergy. A civil constitution of the clergy implies that bishops were to be elected by the people and approved by the French government. Pius VI after due consideration and consultation maintained that it was against the Catholic Church's *modus operandi* because it would empower unbelievers to be involved in the selection of bishops. Consequently, there was a division among the people and priests who supported the constitutional clergy and those who stood by the rebellious clergy. Some priests, bishops, archbishops and cardinal were excommunicated for supporting the schismatic church and working for the French government. Notably, Pius VI (1791) denounced the rights contained in the French 1789 *DRMC* in the papal bull *Adeo Nota*. The papal bull, *Adeo Nota* of 1791 was addressed to the inhabitants of the Papal States that wanted to withdraw their allegiance to the pope and join the French Revolution. Pius VI was stripped of his temporal sovereignty and political domination when the French revolutionaries invaded Rome, captured the Papal States and exiled him to the French fortress, Valence where he died in 1799. For most of the modern period, since the 1789 *DRMC*, the Catholic Church and her leaders have been suspicious of the idea of rights because of its seeming connection to secular Enlightenment sources. The Catholic hierarchy perceived the *DRMC* as opposing "all privilege and hierarchy, designed among other things to undermine the marriage between Christian Church and Christian State, and to threaten continual revolution" (Ruston, 2004: 3).

A certain form of liberalism was common in former European Catholic countries in the nineteenth century. This liberalism proposed a number of civil rights, such as

freedom of religion and freedom of speech “which the Catholic Church always saw as a threat to its position” (Ruston, 2004:4). The late nineteenth century witnessed a historical battle for authority between the Catholic Church and the French revolutionary movement. As Roger Ruston puts it:

Political liberalism came to be associated with an aggressive anticlericalism and a determination to strip the church of its possessions, its privileges and its role in educating the young, often through the expulsion of the religious orders. Democracy was interpreted as inherently hostile to the God-given order of things, deriving power from the people rather than from the only agents of God’s power, Catholic monarchy and the Church.

(Ruston, 2004: 3-4).

Despite the attack on the Catholic Church by liberal rights movement in the nineteenth century, some terms associated with rights began to appear in papal encyclicals. It seemed at this time that the modern liberal rights had replaced the earlier natural rights tradition. Some papal social encyclicals gradually adopted the language of rights though not in its liberal sense and especially against the evils of liberalism. This is evident in Pope Gregory XVI’s (1831-1846) *Mirari Vos* of 1832. Decrying the evils of liberalism and its negative effect on the Church, Gregory XVI asserts *inter alia* that:

The laws of the sacred, the rights, institutions, and discipline - none are safe from the audacity of those speaking evil. Our Roman See is harassed violently and the bonds of unity are daily loosened and severed. The divine authority of the Church is opposed and her rights shorn off. She is subjected to human reason and with the greatest injustice exposed to the hatred of the people and reduced to vile servitude. The obedience due to bishops is denied and their rights are trampled underfoot.

(*Mirari Vos*, 5).

The use of language and expression of rights in papal encyclicals continued during the reign of Pope Pius IX (1846-1878). In most cases, like Gregory XVI, Pius IX

uses the language of rights in his encyclicals against liberalism. In his first encyclical, *Qui Pluribus* of 1846, Pius IX addresses the enemies of the Catholic Church “who even trample underfoot the rights both of the sacred and of the civil power” (*Qui Pluribus*, 13). Later, he would release two documents on the same day, namely, *Quanta Cura* of 1864 that condemns the error of the time manifested in the utter disregard of the “genuine notion of justice and human rights” (*Quanta Cura*, 4). The second document, *Syllabus* of 1864, presents a list of errors of modern times. However, Pius IX in *Quanta Cura* (4) qualifies rights as “legitimate” and declares that the education of children is the right of their parents. In this manner, the expressions and concept of secular rights movement gradually got into the principal documents of the Catholic Church. The positive use of the language of rights progressed, as we shall see in subsequent Church documents beginning with Leo XIII’s encyclicals.

### **5.3.3 Progress in the use of rights’ language beginning with Pope Leo XIII**

Without abandoning reference to divine right, Pope Leo XIII (1878-1903) applied the rights language and expressions of the liberal rights movement. He also broadened the scope of natural rights and their application (*Arcanum Divinae*, 1880; *Custodi Di Quella Fede*, 1892; *Rerum Novarum*, 1891). For example, his encyclical, *Libertas* of 1888 opened the way within the Catholic Church for definite proclamations regarding rights and condemns some of the unconditional rights upheld by liberalism, asserting that man has no right to do wrong. Such liberties when given to human beings is “the power ... to pervert or abandon with impunity the most sacred of duties, and to exchange the unchangeable good for evil; which, as

we have said is no liberty, but its degradation, and the abject submission of the soul to sin” (*Libertas*, 21). In doing so, Leo XIII used the language of rights to oppose liberal rights.

There is a more positive use of the language of rights beginning from *Rerum Novarum* of 1891 (hereafter *RN*). *RN* applies rights language extensively in a manner that is closely related to the liberal use of rights. It appeals to certain rights that workers deserve, including women and children. It emphasizes the social context of rights and the role of government in protecting the rights of workers. It mentions some rights and argues that workers should be treated with justice and respect to their dignity. It provides for the rights of workers (*RN*, 29), right to private property (*RN*, 5,30,38), right to leisure (*RN*, 33-34), right to a just wage (*RN*, 36-37) and right to freedom of association (*RN*, 31,40-49). As such, remarkable progress was made during the papacy of Leo XIII in the late nineteenth century on the dialogue between the Catholic understanding of rights and secular models of rights (Carozza & Philpott, 2012:20). However, Leo XIII upheld the traditional Catholic understanding of rights as based on God who created human beings in his own image and likeness. So rights are grounded in the dignity of the person created in the image of God. He insists that if natural rights are removed from their divine origin, they lose the objective truth. According to him, “Man precedes the State, and possesses, prior to the formation of any State, the right of providing for the substance of his body” (*RN*, 7). He reflects further on some foundational questions of rights such as the relationship of rights to duties and of rights to common good (*RN*, 22). In this way, Leo XIII presented an alternative to liberal rights.

The understanding between the Catholic Church and the liberal rights movement through the use of rights language and expressions in papal encyclicals slowed down during the pontificate of Pope Pius X (1903-1914). He understood rights as based on divine origin in his encyclical, *E Supremi* of 1903. The Catholic Church upholds that rights have divine origin and not on their particular nature as modern liberal thinkers suggested. This was affirmed in his encyclical, *Pascendi Domini Gregis* of 1907. This implies that even as the Catholic Church uses the language of rights after the impact of the French Revolution, papal documents did not depart from the natural rights tradition. Pius X uses the “vocabulary of rights” in his encyclicals in a sense that is different from the sort “articulated by the liberal rights movement, which stressed the rights of individuals vis-à-vis the state” (Williams, 2005: 36).

Pope Pius XI (1922-1939) frequently uses the language of rights in a variety of ways. His encyclicals responded to the existing historical situations, commenting on social, political and economic matters. His encyclical *Quadragesimo Anno* of 1931 comments on the imperialism of money, rejecting the supremacy of money over labour. It sets out the general requirements of the common good and the responsibilities of the public authority towards socio-economic development. Thus within this same framework, *Non abbiamo bisogno* of 1931 condemns fascism. *Mit brennender Sorge* of 1937 was against Nazism, and *Nos es muy conocida* of 1937 focuses on religious persecution in Mexico. Pope Pius XI defended freedom of conscience and presents a synthesis of the teaching of the Catholic Church on the rights of the human person in his encyclical *Divini Redemptoris* of 1937. His encyclicals recognize rights as based on human dignity originating from God through nature and grace, thus upholding the natural rights tradition.

Pope Pius XI as well as Pope Pius XII maintained the teachings of Leo XIII regarding specific rights within Catholic tradition. This was during the turbulent periods of the 1930s and 1940s particularly, World War II period. Pius XII articulated the “basic human rights” of the human person and defended the God-given human dignity in his Christmas Broadcasts of 1942 and 1944. The Pontifical Commission, *Justitia et Pax* of 2011 recognizes Pius XII as one who upholds the human person as “subject, object and foundation for the reconstruction of the human community on the national and international plane” (*Justitia et Pax*, 24). Human rights gradually became an important concept for the Catholic hierarchy and were promoted in Catholic social teaching while insisting on its natural rights origin.

## **5.4 The new era of rights in Catholic social teaching**

### **5.4.1 Theoretical foundations of human rights**

So far, this chapter has briefly explored the gradual emergence of natural rights from the natural law traditions of the medieval period. In addressing the oppressive leadership of the privileged nobility, natural rights tradition received a new definition within the Modern era as exemplified by the French Revolution. With the French Revolution era over, there evolved human rights that are regarded as universal, inherent, and inalienable as a response to the inhumanity of World War II. In our contemporary period, human rights have become a universally recognized way of responding to injustice.

Langlois (2013) suggests that human rights evolved out of liberal political history. However, there are many trends of liberalism primarily founded on the individual human subject. Immanuel Kant (1724 -1804) would argue that human beings should be treated as ends, not as means to an end. Another liberal approach is the grounding of rights on the ability of human beings to use reasoning faculty to achieve certain goals. The necessary conditions for every human being endowed with reasoning to carry out his or her duties are seen as rights. Other grounds for the claim of human rights include autonomy of the human person as human ideal, equality of all, and universality of basic needs. Others include capability as essential to living a life of dignity, consensus among people, and basic dignity of the human person.

Historically, the Christian idea that human beings are created in the image and likeness of God is the justification for human rights. This approach to rights from the viewpoint of human dignity is the theme, which this research exploits to evolve a theologico-legal framework that addresses economic exploitation of working children. Justification of human rights' claims based on human dignity and on God upholds the natural rights tradition. The human dignity's approach to the justification of human rights for all seems to have enhanced the use of rights' language and human rights in non-Western religious and political traditions (Perry, 2000). A Christian background to human rights would enhance the understanding of child's rights especially in Christian populated areas, such as South East Nigeria. The Catholic social teaching always has a Christian justification for the human rights it defends.



#### **5.4.2 The Catholic Church assumes a prominent position in promoting human rights**

The promotion of human rights by the Catholic Church today evolved gradually in the course of history. Initially, the Catholic Church held back due to the liberal modern rights' anti-Catholic stance. Gradually, however, the Catholic Church started to use the expression of human rights in its magisterial documents, the encyclicals. It was John XXIII's encyclical of 1961, *Mater et Magistra* (hereafter *MM*) that opened up an elaborate discussion on human rights. Later, John XXIII's encyclical, *Pacem in Terris* of 1963 (hereafter *PT*) has "human rights" as its major theme. T.D. William observes that at this moment, "the anticlerical virulence that had marked earlier discussions had ceased, and now the Church could devote itself to a deeper study of the topic from its own original point of view" (2005: 37-38).

Pope John XXIII enlarged Catholic's understanding and commitment to human rights although he emphasized the differences between the secular understanding of rights and the Catholics understanding of rights. From the very beginning of *PT*, John XXIII establishes that rights and human dignity belong to the human person as an endowment of human nature. It is the first official Catholic social teaching that deals with human rights, associating human dignity with human rights and duties. It presents as fundamental the principle that:

Each individual man is truly a person. His is a nature, that is, endowed with intelligence and free will. As such he has rights and duties, which together flow as a direct consequence from his nature. These rights and duties are universal and inviolable, and therefore altogether inalienable.

(*PT*, 9).

Considering the human person from the point of view of divine revelation, it acquires

an inestimable value. The dignity of the human person is elevated from the point of view of redemption. “Men have been ransomed by the blood of Jesus Christ. Grace has made them sons and friends of God, and heirs to eternal glory” (*PT*, 10).

John XXIII (1963) in *Pacem in Terris* emphasizes the ideals of the *Universal Declaration of Human Rights* (hereafter *UDHR*). He particularly applauded the provisions of inviolable rights in the *UDHR* which are also classical liberal rights such as, rights to life, right to property, right to freedom of association and right to education. He insists that these rights are to be seen as not based on the autonomous person. He followed the Catholic natural law tradition to affirm such rights as universal and inviolable. He refers to the “natural rights” of the human persons in some places in his encyclical (*PT*, 12-13). He proposes the right to work as suited to one’s capacities and right to follow one’s conscience in worshipping and relating to God. For John XXIII, the ultimate end of human rights should be one’s attainment of salvation and union with God (*PT*, 14). Remarkably, John XXIII gives great support to international structures especially the United Nations, whose aim is to protect the universal human good for the whole human family (*PT*, 142-145).

John XXIII emphasizes the connection of the rights with their respective obligations as follows:

In human society one man’s natural right gives rise to a corresponding duty in other men; the duty, that is, of recognizing and respecting that right. Every basic human right draws its authoritative force from the natural law, which confers it and attaches to it its respective duty. Hence, to claim one’s rights and ignore one’s duties, or only half fulfil them, is like building a house with one hand and tearing it down with the other.

(*PT*, 30).

*Pacem in Terris* claims that respect of individual rights and carrying out personal obligations leads to greater realization of the common good (*PT*, 60). The encyclical enjoins the civil authorities to see to the realization of the dividends of individual rights. It further condemns any government that fails to promote human rights (*PT* 61).

Official documents of the Catholic Church since the early 1960s are replete with rights language and the Catholic Church has “assumed a leading role in promoting human rights and adopts rights language in her teaching” (Williams, 2005:31). The acceptance of human rights by the Catholic Church is evident in some documents of the Second Vatican Council, such as, 1965 *Dignitatis Humanae* (hereafter *DH*) and *Gaudium et Spes* (hereafter *GS*) of 1965. In *GS* the concern of the Catholic Church regarding the nature and dignity of the human person reaches a new depth. *Gaudium et Spes* gives a strong backing to human rights in clear terms. It upholds and presents a wider perspective of the Catholic understanding of the common good to have a universal application. The document insists that to ensure a worldwide peace, development and human rights in our world, international solidarity and proper coordination are of great importance. *DH* made a notable new move regarding religious liberty. *DH* holds that religious liberty is a fundamental right, empowering not only Catholics but also all other Churches to defend themselves wherever their existence is endangered. This was a shift in the earlier position of the Catholic Church that non-Catholics do not have a public right to worship. The Catholic Church has always taught that she is the only true religion, and as the true religion has a right to public worship. However, after the ravages of World War II, the Catholic Church needed to have a common front with other religions in order to

enable social reconstruction. It is within such a scenario that *DH* was promulgated, addressed to all religions, thereby proposing in a positive manner the earlier denied religious freedom to non-Catholics, stating clearly that all religions have rights to religious freedom. “The debates over the declaration were contentious and its passage was difficult” (Griffin, 2004: 245). It was a huge breakthrough in the historical development and understanding of the use of rights’ language in the Catholic Church and beyond.

Pope Paul VI’s *Populorum Progressio* (hereafter *PP*) of 1967 reflecting on the development of peoples insists that practical cooperation among the nations of the world is imperative. He tries to convince the bishops to think of justice not as a theoretical concept. Justice is more than a concept and practical solutions are needed to ensure the rule of justice and protection of the dignity of the human person.

Pope John Paul II’s references to human rights in his writings are too many to be enumerated. John Paul II’s writings showcase a fuller integration of human rights with Catholic social teaching. In *Redemptoris Hominis* (hereafter *RH*), he applauds “the magnificent effort made to give life to the United Nations Organization, an effort conducive to the definition and establishment of man’s objective and inviolable rights” (*RH*, 17). He understands the reign of peace as connected to “respect for man’s inviolable rights” and appeals to the international bodies to “respect the rights of religion and of the church’s activity,” while insisting that the “actuation of this right is one of the fundamental tests of man’s authentic progress in any regime, in any society, system or milieu” (*RH*, 17).

Pope John Paul II's encyclical on human work, *Laborem Exercens* (hereafter *LE*) of 1987, presents work as a human good. *LE* argues for the rights to work not only as a need for sustenance but also as perfective good for man, in a certain sense, making a human person become "more a human being" (*LE*, 9). However, John Paul II in keeping with the Catholic thought on natural rights upholds opposing views to some secular rights declaration on certain issues. For example, he cries out against any secular exercise of human rights that infringes on human life. In *Evangelium Vitae* (hereafter *EV*), he asserts "there exists a great multitude of weak and defenceless human beings, unborn children in particular, whose fundamental right to life is being trampled upon" and described such as "grievous forms of injustice even if these are being presented as elements of progress in view of a new world order" (*EV*, 5). He holds that the weak, needy, elderly and the yet unborn should always be accorded respect and be protected. Although there are "various declarations of human rights" these "proclamations are unfortunately contradicted by a tragic repudiation of them in practice" (*EV*, 18). *EV* further argues that any human right system that fails in its duty towards such people is a direct attack on the "entire culture of human rights" (*EV*, 18).

In Pope Benedict XVI's address to the UN General Assembly during the 60<sup>th</sup> Anniversary of *Universal Declaration of Human Rights* in 2008<sup>39</sup>, he acknowledges that human rights are "increasingly being presented as the common language and

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<sup>39</sup> For further reading see Benedict XVI (2008) <sup>[L]</sup><sub>SEP</sub> *Apostolic Journey to United States: Address of the Holy Father to the General Assembly of the United Assembly of United Nations Organization in New York (April 18, 2008)*. Available at: [http://w2.Vatican.va/content/benedict-xvi/en/speeches/2008/april/documents/hf\\_ben-xvi\\_spe\\_20080418\\_un-Visit.Html](http://w2.Vatican.va/content/benedict-xvi/en/speeches/2008/april/documents/hf_ben-xvi_spe_20080418_un-Visit.Html) (Accessed: 25/01/2016).

ethical substratum of international relations” (Benedict XVI’s Address, 2008). He praises the contributions of the human rights agenda but warns that the same human rights could become dangerous arrows, inventing problems in the face of human rights advancement; such as, cultural relativism, positivism, utilitarianism, increasing demands for new rights and hyper-individualistic interpretations of rights. His insistence on the foundation of human rights on human dignity and humans as created in the image of God is very remarkable. This confirms that Catholic social teaching uses the language of rights but has retained its original medieval natural rights definition, which situates natural rights within the context of natural law tradition. He insists that human rights should always be used to restore justice. Benedict XVI does not have an encyclical dedicated to human rights like John Paul II. However, in his address to the UN General Assembly in 2008 mentioned above, Benedict XVI while praising the *Universal Declaration of Human Rights* argues:

It is evident, though, that the rights recognized and expounded in the Declaration apply to everyone by virtue of the common origin of the person, who remains the high-point of God’s creative design for the world and for history. They are based on the natural law inscribed on human hearts and present in different cultures and civilizations. Removing human rights from this context would mean restricting their range and yielding to a relativistic conception, according to which the meaning and interpretation of rights could vary and their universality would be denied in the name of different cultural, political, social and even religious outlooks.

(Benedict XVI’s Address: 2008).

Pope Francis seems to be more concerned about structural problems than individual rights in his encyclical *Laudato Si`* (hereafter *LS*). His encyclical, *LS* of 2015 presents a collective problem that requires a joint solution. He has not, however, dropped human rights but he is aware that human rights could be used to justify inordinate defence of individual rights. In his Address to the United Nations on 25<sup>th</sup>

September 2015, the fifth time a Pope has addressed the United Nations<sup>40</sup>, he reaffirms “the importance which the Catholic Church attaches to this Institution (the UN) and the hope which she places in its activities.” Pope Francis celebrated the achievements of the UN over the years mentioning especially the development of international law regarding human rights and the management and resolution of conflicts all over the world. The Pope was against absolute power that denies individual dignity and rights. In his address, he insists:

To give to each his own, to cite the classic definition of justice, means that no human individual or group can consider itself absolute, permitted to bypass the dignity and the rights of other individuals or their social groupings... Yet today’s world presents us with many false rights and – at the same time – broad sectors which are vulnerable, victims of power badly exercised: for example, the natural environment and the vast ranks of the excluded. These sectors are closely interconnected and made increasingly fragile by dominant political and economic relationships. That is why their rights must be forcefully affirmed, by working to protect the environment and by putting an end to exclusion.

(Francis’ Address: 2015).

Pope Francis realizes that there are claims of “false rights” and insists on respecting human dignity and rights. His address places and retains the rights-talk in the Catholic Church still within the confines of natural law and natural rights tradition. His reference to “false rights” could be seen as being suggestive of a right-culture that is not embedded in human dignity of human beings as created in the image of God. In *LS*, he argues for the protection of the environment since the human body needs a decent environment to flourish. He insists that God entrusted the

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<sup>40</sup> For further reading see Francis (2015) *Address to United Nations*, New York, 70<sup>th</sup> Session of General Assembly Available at: [http://w2.vatican.va/content/francesco/en/speeches/2015/september/documents/papa-francesco\\_20150925\\_onu-visita.html](http://w2.vatican.va/content/francesco/en/speeches/2015/september/documents/papa-francesco_20150925_onu-visita.html) (Accessed: 12/02/2018).

environment into our hands and should not be abused but protected. Nevertheless, he adds in the Address to the United Nations (2015) mentioned above that “in all religions, the environment is a fundamental good”.

### **5.4.3 Natural rights as a precursor to human rights**

From the foregoing, it could be argued that the natural rights tradition prepared the foundation for the emergence of human rights in the 20<sup>th</sup> century. The concept of natural rights was seen as part of the medieval law tradition and the real precursor of human rights discourse (Mondal, 2017; Tierney, 2004). The concept of natural rights was prominent during the European Enlightenment period with such philosophers as Francis Hutcheson, and Jean-Jacques Burlamaqui. Modern human rights differ both in scope and content from earlier natural rights. However, the nineteenth century Marxism, Utilitarianism, and Anthropological Relativism interrupted the historical progression of natural law and natural rights (Tierney, 2005). These nineteenth century philosophy “eroded belief in any natural rights common to all people” (Tierney, 2005:41).

As earlier mentioned, the fundamental ideas of the human rights movement were developed to forestall a repeat of the atrocities witnessed during the World War II and the barbarisms of the Holocaust. It led to the formulation and adoption of the *Universal Declaration of Human Rights* (hereafter *UDHR*) by the United Nations General Assembly in 1948.<sup>41</sup> It has been suggested that the Catholic tradition of rights seems to have influenced the composition of the *UDHR* by the United Nations

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<sup>41</sup> It is noteworthy that the *UDHR* is not a legal document but a soft law. This implies that it is a non-legal binding resolution of the United Nations.



General Assembly in 1948 (Carozza & Philpott, 2012:20). In addition, as Tierney discovers in his study, “within the old tradition of natural law there was embedded a doctrine of natural rights, and it was that aspect of the tradition that was revived. Moral outrage does not have to be expressed in a language of rights. But in this case, a century-old tradition of natural rights already existed” (Tierney, 2005:41). This suggests that an old tradition of natural rights is now applied to the challenges of the modern times. The new tradition of modern rights may not have continued with the content and scope of old natural rights, but the latter was historically available for the development of modern rights.

The Catholic Church’s acceptance of human rights was based on its age-long understanding of rights as based on human dignity, rooted in the understanding that human beings are created in the image of God, and conceived in the fact that all share in the same common good. There is an established natural rights tradition in the Catholic Church. As such, by adopting human rights, the Catholic Church does not subscribe to its secular foundation on the autonomous sovereignty or to the idea of the absolute.

#### **5.4.4 The Catholic Church upholds human rights with some reservations**

Over the course of the twentieth century following many years of resistance, and beginning more rapidly with Vatican II, the Catholic Church finally came to embrace human rights as contained in international documents like the United Nations *Universal Declaration of Human Rights*. Arguably so, the “Contemporary Catholic social thought, both in official documents and commentaries, has focused quite

extensively on describing the use, meaning and justification of human rights” (Brady, 1993: 97).

However, the embrace of human rights evident in the Catholic social teaching has some reservations. For instance, there are still frictions between the Catholic Church and modern states as regards the human rights they propagate. Apart from the *Universal Declaration of Human rights* of 1948, which is a soft law, the United Nations has eighteen international human rights treaties. The Holy See, the seat of government in the Catholic Church is a state party to only five of the treaties. The official commitment of the Catholic Church to international human rights treaties is minimal. The Holy See signed the *International Convention on the Elimination of All Forms of Racial Discrimination* of 1969 (without declarations) in 1966 and ratified it in 1969. The second treaty ratified by the Holy See in 2002 (with some declarations) is the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1987). The *Convention on the Rights of the Child* of 1990 was the third treaty signed and ratified by the Holy See in 1990 (with some reservations). Other treaties signed in 2000 and ratified in 2001 by the Holy See are the *Optional Protocol to the Convention on the Rights on the involvement of children in armed conflicts* (2002) with declarations, and *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (2002). In all, the Holy See did not sign and/or ratify thirteen international treaties of the United Nations. Nigeria has ratified fourteen out of the eighteen international human rights treaties, including the *Convention on the Rights of the Child* and the two *Optional Protocols*. Out of the five international legal instruments signed and ratified by the Catholic Church, three are related to children

directly. This seem to suggest that the Catholic Church has interest in children but at the same time needs to do more towards the protection and promotion of the rights of working children.

The Catholic Church still has issues with the European Union over Europe's policies on sexuality and family. The Catholic Church still opposes institutions that promote policies regarding abortion, euthanasia, divorce, cloning, stem-cell research, same-sex unions and the UN policy on population control. So, the relationship of the Catholic Church with human rights in modern times has been described as playing out two main characteristics, "a historical convergence and the persistence of tension" (Carozza & Philpott, 2012:16). The Catholic Church is somehow ambivalent in her relationship with liberal rights. Explaining further on its historical perspective, Carozza & Philpott (2012) avers:

Through an extended dialogue with the modern world... and through the parallel evolution of the state and international institutions, the Church's teaching converged more and more with the norm of human rights and democracies found in these secular institutions. This convergence was consolidated at Vatican II. But Vatican II did not dispel differences between Catholic and secular articulations of human rights and democracy, either in theory or in practice.

(Carozza & Philpott, 2012:38).

Catholic articulation and understanding of human rights remain different from secular human rights. Certainly, there seem to be some degree of convergence and some degree of conflict at the same time. The Catholic Church differs from other international institutions like the United Nations and European Union in her understanding of the common good as based on the union of human family and the dignity of human beings as created in the image of God. The liberal rights uphold the

view that human beings are fundamentally and naturally autonomous and free thereby denying human beings of their dependence on God. Even when the Catholic Church speaks against some issues on immigration, war and security, she does so based on her understanding of the common good and freedom, which differs from the freedom of the subjective individual.

The Catholic Church before, during and after Vatican II still upholds as ever the “transcendent dignity of the human person and affirming that the legitimacy of any political authority lies in its accountability to the common good, understood as a moral order grounded in this human dignity, rather than in state sovereignty or even democracy as such” (Carozza & Philpott, 2012:38). The Catholic tradition understands human rights as an objective reality, based on natural law and prior to any positive legislation. Human rights are based on the dignity of the human person, a dignity revealed by God. Human rights defend the common and genuine good of human beings (*Mater et Magistra*, 1961; *Pacem in Terris*, 1963; *Dignitatis Humanae*, 1965; *Gaudium et spes*, 1965 and *Laborem Exercens*, 1981). With some reservations, the Catholic Church today speaks and promotes human rights but not in the modern liberal sense.

## **5.5 Concluding remarks**

This chapter traced the origins and development of natural rights tradition beginning from the medieval period. The medieval period delineates how the contributions of the canonists-scholastics promoted a better understanding of the Gratian’s *Decretum* that gave rise to commentaries that led to the emergence of natural rights. The

natural rights tradition was situated within the natural law. As such, it held the notion of permissive natural law; a natural law that allows the human person to claim personal rights. Natural rights were used during the medieval era as a tool for social justice. Its modern formulation following the French Revolution led to conflicts between the Catholic Church and what could be called secular liberal rights theorists. As a result of the anti-Catholic stance on modern liberal rights, the Catholic hierarchy initially slowed down in using the language of rights. The Catholic Church gradually employed the language of rights as evident in the encyclical of Pope Gregory XVI that condemned the evils of liberalism. Leo XIII widened the scope and improved upon the use of the language of rights. It was John XXIII that finally embraced the concept of human rights. From that moment onwards, Catholic social teaching used the language of rights in a wider perspective, while maintaining the natural rights tradition. Brady argues that Catholic social teaching uses “human rights” and “natural rights” interchangeably in that “human rights” are understood to be resting on the natural endowments in the human person (1993:105). The Catholic Church uses the terms “human rights” and “natural rights” interchangeably, not in the sense that her teaching agrees to rights as grounded on individual liberty, rather the Catholic social teaching insists that human rights are based on the dignity of the human person created in the image of God.

However, the Catholic Church has not completely embraced secular human rights formulation as she holds reservations to some modern ideas about human rights. Although *UDHR* is a soft law and has no binding force, Tierney (2005) suggests that: “All the mainstream Christian churches now endorse the idea of human rights, and for Catholics, Pope John Paul II warmly embraced the principles of the United

Nations *Universal Declaration of Human Rights* when he addressed the United Nations in 1979” (Tierney, 2005:24). However true this claim might be, the anti-clerical and anti-Catholic liberal stance of the promoters of natural rights in the 18<sup>th</sup> century may have left a lingering mistrust that the idea of rights is incompatible with the Catholic teaching. This situation leaves a “deep ambivalence towards the expansion of individual rights in so far as it may effect church life or those areas of human life in which it considers itself the principal moral authority” (Ruston, 2004:4).

There is a proliferation of rights language rooted in a secular liberal understanding of human autonomy, with no foundation in theological concepts such as the *imago Dei*. This increases the need to preserve the ideal human rights based on the rational nature of human beings as created in the image of God. It gives more support to the aim of this research, that is, to produce a theologico-legal resource to assist Catholic agencies in relation to the preservation of the rights of working children. “It is true that the idea of human rights is of Western origin; but that does not mean that it is necessarily irrelevant for everyone else. ...Modern technology is a Western creation, the product of several centuries of distinctively Western development, but it has been eagerly accepted in all parts of the world” (Tierney (2004:12). The idea of human rights is Western in origin but its acceptance and implementation in the developing countries such as Nigeria, will not only benefit Nigeria but also enrich the Western world and other developing nations in understanding more horizons of promoting and protecting human rights. The air of suspicion regarding the liberal aspect of human rights may have affected the development and implementation of human rights in some regions of the world with huge Catholic population, including South

East Nigeria. This would also partly explain the lack of sufficient resource for the rights of working children in South East Nigeria. The idea of human rights based on medieval natural rights tradition would be of relevance towards a new theology of rights for working children. A theology of natural rights that acknowledges God, the common good and respects human dignity as upheld in Catholic social teaching will be a reliable foundation in formulating a theory for a good practice of child labour in South East Nigeria.

## CHAPTER 6

### THE RIGHTS OF WORKING CHILDREN SINCE THE BEGINNING OF MODERN CATHOLIC SOCIAL TEACHING

#### 6.1 Introduction

The previous chapter situated the emergence of natural rights within the medieval natural law tradition. The natural rights tradition developed out of a permissive natural law tradition (Tierney, 2004). During the medieval period, “natural law was gradually expanded to accommodate a new recognition of what have come to be called “subjective rights” (Pope, 2004: 43). These subjective rights later came to be a precursor to the emergence of modern subjective “natural rights”. The medieval natural law tradition allows the individual person to make personal rights claims. The natural law tradition recognizes that human beings are created in the image of God and are naturally endowed with human dignity. The natural rights tradition provided ground for the emergence of human rights in the 20<sup>th</sup> century.

As mentioned in the previous chapter, out of the eighteen international human rights treaties, the Holy See has signed and ratified only five of them, including the *CRC* (1989) with its two *Optional Protocols*. Up to this present time, the Catholic Church seems to adopt the attitude of selective acceptance of human rights, with reservations and declarations on the few international human rights documents she signed and ratified. It is commendable to note that three of the five international human rights treaties ratified by the Holy See are directly related to children. This research argues that a Christian justification of rights would be beneficial in understanding and



protecting the rights of working children in the South East Nigeria, an area predominantly made up of Catholic Christians.

Owing to the positive attention of the Catholic Church towards three major international human rights treaties that are directly related to the rights of children, this chapter investigates the extent that the Catholic social teaching makes reference to working children and the work they do. The primary concern will be with the conciliar and pontifical documents since they form the basis on which Catholic bishops all over the world develop their social teachings in their particular contexts. It seeks to establish whether the Catholic Church has given sufficient attention to the plight of working children in her teaching. As this chapter exposes, there is paucity of references to working children in the principal documents of the Catholic Church. The following presentation argues that since the Catholic Church is a state party to the *CRC* of 1989, she needs to do more to protect children's rights, as children have become "barely visible" in the principal social teaching documents of the Catholic Church (Regan, 2014:1031). The situation establishes the need to give more attention to the protection of working children using the language of rights in a theologically sensitive manner.

The first section briefly explores modern Catholic social teaching and its reference to working children, from Leo XIII's encyclical *Rerum Novarum* (1891) up to *Pacem in Terris* (1963) of Pope John XXIII. The second section examines two documents of Vatican II to ascertain if they make reference to children or working children, namely *Gaudium et Spes* (1965) and *Dignitatis Humanae* (1965). The third section explores the frequency with which the post-Vatican II principal social teaching

documents refer to children and working children beginning from *Populorum Progressio* (1967) of Pope Paul VI to Pope John Paul II's *Evangelium Vitae* (1995). The last section reflects on the relevance of 21<sup>st</sup> Century Catholic social teaching on working children from the *Compendium of the Social Doctrine of the Church* (2004) to *Laudato Si'* (2015) of Pope Francis.

Over all, it is arguably true that the Catholic Church may have in practice given some attention to children and working children, but a theologico-legal resource that would facilitate and properly define the work done by the Catholic Church will be of benefit, especially in South East Nigeria. It provides a theologico-legal resource for Catholic agencies in the area of working children through the analysis of the rights of working children with Catholic social teaching so as to ensure a contextualized response to the dangers of child labour. It will also help to protect the rights of working children especially in South East Nigeria, an area predominantly made up of Catholic Christians.

## **6.2 Modern Catholic social teaching on working children, 1891 – 1963**

This section explores modern Catholic social teachings (1891 -1963) to establish the extent to which they make reference to children or working children. Catholic social teaching beginning with the promulgation of *Rerum Novarum* (hereafter *RN*) in 1891 by Leo XIII is designated as *modern* Catholic social teaching. There is a need to avoid the impression that prior to 1891 the papacy overlooked social topics. However, *RN* “inspired deeper and broader commitment by church members to the social questions of the time...[and] its impact on the wider church as well as its

subsequent commemoration by later popes” were remarkable (Himes, *et al*, 2004:3). Consequently, it is unofficially considered as the first text of modern Catholic social teaching. Later popes consistently refer to *RN* in their social teaching such that it became a reference point for the Church’s deposit of social teaching. For example, Pope Pius XI’s encyclical *Quadragesimo Anno* was issued to mark the fortieth anniversary of *RN* in 1931. Pope John XXIII’s encyclical *Mater et Magistra* was published in 1961 on the seventieth anniversary of *RN*. Pope Paul VI’s apostolic letter *Octogesima Adveniens* was promulgated in 1971 to mark the eightieth anniversary of *RN*. In 1981 Pope John II published an encyclical *Laborem Exercens* in commemoration of the ninetieth anniversary of *RN*. In 1991, ten years after *Laborem Exercens*, Pope John Paul II published another encyclical *Centesimus Annus* to mark the centenary of *RN*. *RN* thus becomes the urtext of modern Catholic social teaching.<sup>42</sup>

Catholic social teaching is to be understood as the official teaching of the Catholic Church, promulgated by her hierarchy. Catholic social teaching touches on a variety of topics including war, peace, poverty, development, new economic questions, dignity of the human person, the call to family, community and participation, the rights of workers and dignity of work, welfare of the poor and the vulnerable, global solidarity and interdependence (McBrien, 1993). This differs from other Catholic

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<sup>42</sup> Note that before the promulgation of *Rerum Novarum* in 1891 by Leo XIII, many popes addressed social questions of their times, including economic morality as a principal social question. However, it is evident that *RN* inspired many subsequent popes who always made defined references to *RN* as the urtext. A reflection on the contributions of the Catholic Church hierarchy and theologians on social issues before 1891 is available: See Schuck, Michael, J.(2004) *Early Modern Catholic Social Thought, 1740 -1890*, Himes, Kenneth R., *et al* eds. (2004) *Modern Catholic Social Teaching: Commentaries and Interpretations*. Washington, DC: Georgetown University Press pp. 99 – 124.

social thought which refers to the reflections and contributions of Catholic thinkers who address social questions of their time based on their own personal faith and understanding (Himes *et al*, 2004). Catholic social teaching is narrowly restricted to the approved teaching of the Catholic hierarchy and is less broad than Catholic social thought. The nature of documents examined in this chapter is not all irrefutably Catholic social teaching. The choice was made in a manner that would be of advantage to the goal of this research.

However, as there are other branches of the Catholic Church, this reflection is based on the documents of the Roman Catholic Church. These documents have been produced by a small group of people but the official authors are the popes, or ecumenical councils. The Catholic Church assumes it is possible to fashion a teaching that is universally relevant and speaks to all people of all contexts “due in large part to reliance upon the methodology and presumptions of natural law tradition” (Himes, *et al*, 2004:5). However, the majority of people involved in the writing of these documents as ghostwriters, consultants and pastoral ministers are European clerics. This raises the question of how much they know regarding other parts of the world and how relevant these social teachings are to Africa, especially in reference to the wellbeing of working children in South East Nigeria. The following section begins with examining the extent *RN* of Pope Leo XIII made reference to children or working children in his epochal encyclical letter on the social question on human work.

### **6.2.1 *Rerum Novarum* (1891) - Leo XIII**

Pope Leo XIII's *Rerum Novarum* in 1891 (hereafter *RN*) "attacked one of the most basic tenets of nineteenth-century liberal thought, namely, that the church has neither the competence nor the right to intervene in the social, political and economic orders" (McBrien, 1993:151). In this way, Leo XIII resisted the secular liberal movement and reasserted the power and influence of the Catholic Church in the secular world. Responding to the social question of work during the industrial revolution, Leo XIII in a bid to better the conditions of the working class and reconcile the upper and lower classes, of rich and poor, and of property owners with workers issued this encyclical (*RN*, 19-20).

Leo XIII's stance on the condition of workers was as a result of influence from Bishop Wilhelm Emmanuel Baron von Ketteler (1811-1877). Bishop von Ketteler was a German theologian whose social teaching became popular during the papacy of Leo XIII. He was one of the first who systematically confronted social issues of industrial revolution in Europe through Catholic perspective. His influence on Leo XIII is evident in his encyclical *Rerum Novarum* (*RN*). For example, Bishop von Ketteler promoted the formation of workers' guilds so that workers themselves might become entrepreneurs (Aubert, 2003). This stance may have influenced Leo XIII in promoting the formation of workers' union in his encyclical *RN*.

The first reference to children in *Rerum Novarum* is in the context of the rights of the worker, to be precise, the male head of the family. The encyclical affirms the father as the head of the family. It argues that:

It is a most sacred law of nature that a father should provide food and all necessities for those whom he has begotten; and, similarly, it is natural that he should wish that his children, who carry on, so to speak, and continue his personality, should be by him provided with all that is needful to enable them keep themselves decently from want and misery amid uncertainties of this mortal life. Now, in no other way can a father effect this except by the ownership of productive property, which he can transmit to his children by inheritance.

(*RN*, 13).

Thus, it recognizes the transfer of private property by the male head of the family to his children through inheritance. Although society should contribute to the upbringing of children, it is the man's primary responsibility as the head of the family. *RN* frowns at the intrusion of the government into family matters, for "the family has at least equal rights with the State in the choice and pursuit of the things needful to its preservation and its just liberty" (*RN*, 13). It regards the intrusion of government control on intimate family matters as "a great and pernicious error" (*RN*, 14). The child belongs to the father and "the child takes its place in civil society, not of its own right, but in its quality as member of the family in which it is born" (*RN*, 14). However, it allows the intervention of government only when there is danger, bearing in mind that each family is a part of the commonwealth. It emphasizes that government's involvement in family matters that sets aside the role of the parents goes against the natural family structure and is an act against natural justice (*RN*, 14).

Furthermore, *RN* comments on the plight of working children during the Industrial Revolution era. It describes the forced labour of children as "cruelty of men of greed, who use human beings as mere instruments for making money" (*RN*, 42). It insists that children should not be allowed to do the same kind of work as adults. *RN* stresses that:

work which is quite suitable for a strong man cannot rightly be required from a woman or a child. And, in regard to children, great care should be taken not

to place them in workshops and factories until their bodies and minds are sufficiently developed. For, just as very rough weather destroys the buds of spring, so does too early an experience of life's hard toil blight the young promise of a child's faculties, and render any true education impossible.

(*RN*, 42).

Following from this, it is evident that *RN* did not totally denounce children from working. The outcry was against the use of children as mere means and agents of self-enrichment by the owners of the means of production, or in forms of work they were not sufficiently developed to be engaged. *RN* is narrowly concerned about the plight of children in industrialized areas of the world. As such, it creates a gap in responding to the welfare of working children in other parts of the world that are not yet industrialized or technologically advanced like Europe, such as South East Nigeria. Exploitation of working children takes place away from industries, outside the common view of people in South East Nigeria. Forced labour of children may not be easily detected in informal and household settings. *RN* fails to address the affairs of children working in areas that lack proper government regulations. Consequently, it fails to offer protection and justice to children working in informal settings as is common in South East Nigeria.

*RN* recognizes the need to offer "special consideration" in protecting the rights of the poor and the weak since the rich can cater for their own needs. It sees workers among those that need the special care of the State (*RN*, 54). It decries as "shameful and inhuman" the use of workers generally as ordinary means of making wealth. The document emphasizes that oppressing workers detracts from their dignity as human persons and there is need to protect them from such injustice (*RN*, 31, 59). Though these statements were made in relation to adult workers, they are also true of child

workers. Working children are among the weak and the poor in society who are dependent on the State for protection against oppression and inhuman treatment in their work places. Protection of the rights of working children by the state is not sufficient, as the informal sector may not receive adequate attention. In the informal sector, regulations regarding justice to working children are sometimes inexistent and/or are difficult to enforce (Ibanga, 2007). The need to fill the lacuna created by dearth of a theological resource on justice for working children demands an urgent contextualized response.

Nevertheless, it is true that *RN* does not give sufficient attention to the plight of working children in all contexts especially to developing countries like Nigeria, it has in clear terms pointed out that working children deserve a special treatment – a treatment that has to be different from the treatment given to adult workers. This implies that in the world of work and production, what is expected from working children should not be the same with what is expected from adult workers. Working children also deserve greater protection and classified conditions of work that would be different from adult workers' demands. Since *RN* condemns exploitative child labour and forced labour, it has invariably acknowledged children's vulnerability and the need to protect working children from all agents and circumstances of child labour exploitation. Following from the above standpoint, the researcher argues that *RN* has set a precedent and a foundation on which a properly articulated rights of working children could be developed in Catholic social teaching.



### 6.2.2 *Quadragesimo Anno* (1931) - Pope Pius XI

After Leo XIII's papacy, Pope Pius X (1903-1914) and Pope Benedict XV (1914-1922) did not offer much in terms of Catholic social teaching.<sup>43</sup> However, there was a ray of hope with the coming of Pius XI whose encyclical; *Quadragesimo Anno* in 1931 (hereafter *QA*,) marked the 40<sup>th</sup> anniversary of Leo XIII's *Rerum Novarum*. Pius XI claims that the encyclical was "listened to with great admiration and greeted with profound sympathy not only by the loyal children of the Church, but by many also who had wandered far from the truth and from the unity of faith" (*QA*, 13). It is the first encyclical to use the expression "social justice" in relation to the gap between the rich and the poor in society (*QA*, 58). The document calls for the application of the norms of the common good:

To each, therefore, must be given his own share of goods, and the distribution of created goods, which, as every discerning person knows, is labouring today under the gravest evils due to the huge disparity between the few exceedingly rich and the unnumbered propertyless, must be effectively called back to and brought into conformity with the norms of the common good, that is, social justice.

(*QA*, 58).

Pius XI praises the contribution of *Rerum Novarum* and acknowledges the development of a new strand of law "to protect vigorously the sacred rights of workers that flow from their dignity as men and as Christians", especially women

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<sup>43</sup> Leo XIII's concern for children working in industries was not developed by his successor Pius X, 1903-1914. Pius X's interest was to calm the growing tensions between egalitarian and hierarchical societies. He was concerned with the problems of modernism. His successor Benedict XV (1914-1922) carried on the anti-modernist campaign. The papacies of Pius X and Benedict XV has been described as a "contraction" of the Catholic teaching on socio-economic justice, lacking improvement on the foundational teachings of Leo XIII (Regan, 2014). There is a total absence of references to working children in their teaching.

and children (*QA*, 28). *QA* argues for a sufficient wage for the head of the family. It insists that “to abuse the years of childhood and the limited strength of women is grossly wrong” (*QA*, 71).<sup>44</sup> It maintains that women should concentrate on household duties for fear of neglecting their specific role in children upbringing by taking up paid jobs. One would expect that working children will be given greater attention, rather children are mentioned later in connection with training them in socialist activity by some socialist groups. *QA* remarks that “under the guise of affection it tries in particular to attract children of tender age and win them to itself, although it also embraces the whole population in its scope in order finally to produce true socialists who would shape human society to the tenets of Socialism” (*QA*, 121). The Catholic Church acknowledges that though socialism contains some truths, it is incompatible with the true Christianity (*QA*, 120). Like Leo XIII in *RN*, Pius XI frowns at any intrusion by the state into family matters (*QA*, 121).

There is no extensive discussion on child labour by Pius XI. However, Pius XI in *QA* denounces Catholic employers who

are almost completely unmindful of that sublime law of justice and charity that binds us not only to render to everyone what is his due but to succour brothers in need as Christ the Lord Himself, and - what is worst - out of greed for gain do not scruple to exploit the workers. Even more, there are men who abuse religion itself, and under its name try to hide their unjust exactions in order to protect themselves from the manifestly just demands of the workers.

(*QA*, 125).

The *QA* stood against employers who “hold that they are allowed, in any manner whatsoever, to increase their profits and use means, fair or foul, to protect their hard-

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<sup>44</sup> In this manner, the encyclical admits the vulnerability of women and children, although feminist theologians would argue against the bracketing together of women and children.

won wealth against sudden changes of fortune... their one aim being to make quick profits with the least expenditure of work” (*QA*, 132). Such people are “hardened to the strings of conscience” and are exploitative (*QA*, 132). Its use of work as an “instrument of perversion”, especially among young workers is articulated as follows:

Truly the mind shudders at the thought of the grave dangers to which the morals of workers (particularly younger workers) and the modesty of girls and women are exposed in modern factories; when we recall how often the present economic scheme, and particularly the shameful housing conditions, create obstacles to the family bond and normal family life; when we remember how many obstacles are put in the way of the proper observance of Sundays and Holy Days... and upon its substitution by the single preoccupation of getting in any way whatsoever one’s daily bread.  
(*QA*, 135).

A detailed attention to working children is totally absent in this encyclical. The emphasis it places on younger workers indicates that the Catholic Church is aware of the vulnerability of young people and the injustices they encounter in workplaces. For this reason, it should have devoted more attention to working children. The encyclical acknowledges that the State “in protecting private individuals in their rights, chief consideration ought to be given to the weak and the poor” (*QA*, 25). Working children are among the weak and the poor and their rights need to be protected both in theory and in practice.

Nevertheless, rights’ talk on the conditions of workers initiated in *RN* by Leo XIII in modern times continues in *QA* without explicitly excluding working children. *QA* should have said more in relation to the rights of working children. However, *QA* acknowledges the vulnerability of children and describes as unjust employers that use work as “instrument of perversion” towards young workers (*QA*, 135). In this

manner, though insufficiently, the rights tradition established in *RN* in relation to the rights of working children is not totally lost. The lack of sufficient attention to the plight of working children in *QA* creates a gap in the promotion of justice for working children.

### **6.2.3 *Mater et Magistra* (1961) - Pope John XXIII**

Pope John XXIII issued the encyclical, *Mater et Magistra* (hereafter *MM*) to mark the 70<sup>th</sup> anniversary of *Rerum Novarum*. *MM* recalls Leo XIII's condemnation of the exploitation of workers. It decries the unjust treatment of workers, including women and children. Here the encyclical *MM* as in some other places admits the vulnerability of women and children, although feminist theologians would argue against the bracketing together of women and children.

Wages were insufficient even to the point of reaching starvation level, and working conditions were often of such a nature as to be injurious alike to health, morality and religious faith. Especially inhuman were the working conditions to which women and children were sometimes subjected. There was also the constant spectre of unemployment and the progressive disruption of family life.

(*MM*, 13).

*MM* insists that the State exists for the common good of its members. In discharging its duty, the State is to “protect the rights of all its people, and particularly of its weaker members, the workers, women and children” (*MM*, 20). Unlike Leo XIII and Pius XI, it does not address the intrusion of the state into family matters. The important contribution of this encyclical in the fight for social justice is to be found in its emphasis on the importance of the state in protecting children and workers. Children are mentioned in a few other places in relation to birth control and

economic development (*MM*, 185 -199), and the role of parents in ensuring religious and cultural education of their children (*MM*, 195).

Finally, *MM* makes reference to “young people”, in connection with “the reduction of social principles into practice” (*MM*, 236). *MM* insists that our young people should know and use this method in practical life situation in order to contribute to the realization of the Catholic social teaching (*MM*, 237). On the three stages of Catholic social practice, *MM* stipulates: “First, one reviews the concrete situation; secondly, one forms a judgment on it in the light of these same principles; thirdly, one decides what in the circumstances can and should be done to implement these principles. These are the three stages that are usually expressed in the three terms: look, judge, act” (*MM*, 236). A modified version of this principle will form part of the recommendations of this research, as we shall see later in chapter eight.

It should be noted that this encyclical does not give detailed attention to working children. It acknowledges that children engaged in commercial work are vulnerable and there is a need to protect their rights (*MM*, 13). *MM* makes a remarkable contribution in emphasizing the role of the State in protecting the rights of all, especially children. This implicitly involves the protection of the rights of working children. *MM* fails to respond to governments that do not consider justice to working children a priority in their administration and does not suggest an alternative means to enforce the rights of working children. *MM* recognizes that “neither justice nor peace” can be realized without respecting and protecting the dignity of the human person (*MM*, 215). Exploitative working condition is an affront to the dignity of working children. There are limited references to working children in John XXIII’s

encyclical, *MM*, and there is an absence of proper deliberation on the practical demands of protecting the rights of working children in this encyclical. Although, *MM* lacks the essentials of a reference text for the protection of the rights of working children, it sustained the tradition of rights for workers in Catholic social teaching in a scanty manner.

#### **6.2.4 *Pacem in Terris* (1963) - Pope John XXIII**

Between the first and second sessions of the Vatican II, Pope John XXIII issued another encyclical, *Pacem in Terris* (hereafter *PT*), which is the first official Catholic social teaching document that deals with human rights. The encyclical was not addressed to Catholics alone but “to all men of good will” (*PT*, 1). The encyclical was addressed:

not just to the usual assortment of patriarchs, primates, archbishops, other local ordinaries, and the clergy and faithful of the whole church. Consequently, if the audience for the church’s social teaching is to be wider than the church, the teachings’ content, language, and supporting arguments must be formulated in such a way as to be intelligible and persuasive for those outside as well as inside the church.

(McBrien, 1993: 154 -5).

*PT* associates human dignity with human rights and places it at the centre of Catholic social teaching. It recognizes human rights and obligations as “universal and inviolable”, possessed by every human being as a natural endowment (*PT*, 9). This is based on the fact that every individual is essentially a person; “a nature, that is, endowed with intelligence and free will” and his rights and responsibilities are based on “a direct consequence of his nature” (*PT*, 9). *PT* further discusses the rights of human being by virtue of natural law and as a person endowed with reasoning and

free will, ranging from right to life, bodily integrity and means suitable for proper development of life (*PT*, 11).

Notably, working children are not directly mentioned. It makes allusion to the support and education of children as a prior right belonging to parents (*PT*, 17). It stresses that natural law gives everyone the right to work without coercion (*PT*, 18). With regard to the economic rights of workers, John XXIII recognizes “a further consequence of man’s personal dignity is his right to engage in economic activities suited to his degree of responsibility”(PT, 20). He stresses the need to assist workers to meet their family financial responsibilities by insisting on the need to pay a family wage, amount “sufficient, in proportion to available funds, to allow him and his family a standard of living consistent with human dignity” (*PT*, 20). *PT* specifically refers to “young people”. It adds that:

To these rights is certainly joined the right to demand working conditions in which physical health is not endangered, morals are safeguarded, and young people’s normal development is not impaired. Women have the right to working conditions in accordance with their requirements and their duties as wives and mothers.

(*PT*, 19).

Though the encyclical does not directly refer to working children, the reference to workers’ capability to carry out certain duties is a relevant topic with regard to working children. If “young people” as used in the encyclical includes children, it means that it re-echoes Leo XIII’s statement that denounces any work that endangers the proper development of children (*RN*, 42). Although, *PT* is the first systematic and official presentation of human rights by an official document of the Catholic social teaching, working children are not given direct and sufficient attention. Consequently, *PT* fails to provide a sufficient guide that could be used to offer a

contextualized response to child labour in South East Nigeria. However, *PT* maintains the tradition of rights discussion in Catholic social teaching in relation to workers, though to an insufficient degree. The next section explores the lack of sufficient attention of Vatican II to the welfare of working children even after the originating text of Leo XIII *Rerum Novarum* in 1891.

### **6.3 Vatican II Catholic social teaching on working children, 1965**

#### **6.3.1 *Gaudium et Spes* (1965)**

In 1965, *Gaudium et Spes* (hereafter *GS*), the conciliar document of Vatican II on the Church in the modern world was issued. Its first statement places needy humanity at the centre of concern for the Church: “The joys and the hopes, the griefs and the anxieties of the men of this age, especially those who are poor or in any way afflicted, these are the joys and hopes, the griefs and anxieties of the followers of Christ” (*GS*, 1). Further, the conciliar document clarifies that the “Church has no proper mission in the political, economic, or social order. The purpose which he [Christ] set before her is a religious one...Moreover, in virtue of her mission and nature, she is bound by no particular form of human culture, nor to any political, economic, or social system” (*GS*, 42).

It presents humanity as a community and emphasizes the need to protect and support one another. Examples include, “an old person abandoned by all, a foreign labourer unjustly looked down upon, a refugee, a child born of an unlawful union and wrongly suffering for a sin he did not commit, or a hungry person who disturbs our



conscience” (*GS*, 27). It acknowledges the need to protect children born outside of marriage. The document denounces varieties of crimes in society, including:

whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children; as well as disgraceful working conditions, where men are treated as mere tools for profit, rather than as free and responsible persons; all these things and others of their like are infamies indeed. (*GS*, 27).

Such criminal acts “poison the human society” and “do more harm to those who practice them than those who suffer from the injury” (*GS*, 27).

However, its reference to working conditions is not directly in relation to children. It refers to children in the context of the holiness of marriage and family. It holds that spouses are united for their wellbeing and that of their children. It holds that the proper development of children demands complete fidelity and an unbreakable union of the couple. It acknowledges the importance of children to their elderly parents as a notable source of support:

As living members of the family, children contribute in their own way to making their parents holy. For they will respond to the kindness of their parents with sentiments of gratitude, with love and trust. They will stand by them as children should when hardships overtake their parents and old age brings its loneliness. (*GS*, 48).

The conciliar document mentions children as an essential factor in defining marriage and married love: “Marriage and conjugal love are by their nature ordained toward the begetting and educating of children. Children are really the supreme gift of marriage and contribute very substantially to the welfare of their parents” (*GS*, 50). It makes reference to children in the context of birth control and its effects on

sustainable authentic marriage love and life that adversely affects “upbringing of the children and the courage to accept new ones” (*GS*, 51). It presents the family as a kind of school for the upbringing of children. It acknowledges the roles of both parents and maintains that the role of the father is irreplaceable in the upbringing of children. It encourages mothers to be committed to the education and upbringing of their children. It places great value on the important roles played by women and upholds that “domestic role of hers must be safely preserved, though the legitimate social progress of women should not be underrated on that account” (*GS*, 52).

More so, *GS* identifies the family as a place where different generations “come together and help one another grow wiser and harmonize personal rights with the other requirements of social life” (*GS*, 52). It calls on all members of the society to support and work for the good of marriage and family life. *GS* seems to repose much confidence on the family. One might question why so much trust is given to the parents, bearing in mind that some working children are exposed to exploitation and unhealthy working conditions within their families or extended family relations.

Nonetheless, sufficient attention to working children is lacking in *GS*. A conciliar document of this nature, which has many contributors from all over the world seems to overlook the sufferings of working children and so does not give sufficient attention to their unjust working conditions. It is worrisome that the well being of working children seems not to have attracted much attention at a time the Catholic Church embarked on a renewal through her Second Vatican Council. Its reference to and condemnation of “disgraceful working conditions” (*GS*, 27) could be seen as a

sustenance of Catholic social teaching and tradition on the rights of workers as addressed by Pope Leo XIII's encyclical *Rerum Novarum* of 1891.

### **6.3.2 *Dignitatis Humanae* (1965)**

*Dignitatis Humanae*, (hereafter *DH*) is a document of Vatican II that addresses religious freedom. It was the last of the documents of Vatican II to be promulgated. It is the only document of the council that officially addressed the whole world on the issue of religious freedom. *DH* brings in a new understanding to religious worship and human rights. It argues for freedom and public right to worship not only for Catholics but also for all religions. It is a short document with only two chapters.

McBrien (1993) summarily presents the conciliar document thus: "The entire teaching contained in the document is based on two principles: (1) the dignity of the human person (no.1), and (2) the freedom of the act of faith (nos.9-12). Inherent in both principles is the demand that people should act on their own initiative and responsibility, not under coercion" (McBrien, 1993:158). *DH* explains that: "This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits" (*DH*, 2). Everyone therefore has the right and moral responsibility to search and seek for religious truth and to be guided by it.

Although the *DH* is a landmark conciliar document on public right to worship as it understands the multidimensional religious context of our world, it does not in any way make any reference to working children as its focus is on the right to religious worship. Right from the beginning of the document, it asserts that “God Himself has made known to mankind the way in which men are to serve Him, and thus be saved in Christ and come to blessedness. We believe that this one true religion subsists in the Catholic and Apostolic Church, to which the Lord Jesus committed the duty of spreading it abroad among all men” (*DH*, 1). It rejects the idea that all religions are equally true.

*DH* situates the right to freedom of worship on the dignity of the human person. This right to religious worship is not founded on truth or conscience but on human dignity. In this way making every human person a possessor of this right. The human dignity is founded on God and reason (*DH*, 2). The document insists that the right to freedom of worship should also be regarded as a civil right. With the promulgation of *DH*, the Catholic Church now recognizes that the right to religious worship belongs to individuals, churches and families.<sup>45</sup>

The conciliar document mentions children in relation to the kind of religious education they can receive:

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<sup>45</sup> Commenting on *Dignitatis Humanae*, Leslie Griffin (2004) points out the change brought in by Vatican II’s *Dignitatis Humanae*: “In the pre-conciliar Church it was appropriate for the government to restrain the practice of erroneous religion. Only the true religion had the right to public worship; erroneous religion could be prohibited from public worship.” For further reading see Griffin, Leslie (2004) Commentary on *Dignitatis Humane* (Declaration on Religious Freedom) Himes, Kenneth R., et al eds. (2004) *Modern Catholic Social Teaching: Commentaries and Interpretations*. Washington, DC: Georgetown University Press pp. 244 – 265.

The family, since it is a society in its own original right, has the right freely to live its own domestic religious life under the guidance of parents. Parents, moreover, have the right to determine, in accordance with their own religious beliefs, the kind of religious education that their children are to receive. ... Besides, the rights of parents are violated, if their children are forced to attend lessons or instructions which are not in agreement with their religious beliefs, or if a single system of education, from which all religious formation is excluded, is imposed upon all.

(*DH*, 5).

It insists that the government should not in any way interfere with parents' rights to choose schools for their children. In this manner the document reposes the right to freedom of religious worship of children on their parents hoping that their choice would be to the best interest of their children. Children are indirectly regarded as possessors of this right against external influences, such as the government. The government should create a beneficial setting that fosters religious life of its citizens (*DH*, 6).

*DH* further situates the right to religious freedom on divine revelation. It holds that the right to freedom of religious worship is founded on scriptural and theological foundations. *DH* insists that "this doctrine of freedom has roots in divine revelation, and for this reason Christians are bound to respect it all the more conscientiously" (*DH*, 9). The right to religious worship carries with it the responsibility to seek for the truth. As this document is dedicated to religious freedom, working children were not mentioned. Children are mentioned in the context of the family, religious education and choice of school.

Surprisingly, Vatican II has failed to address the conditions of working children in her documents. However, its reference to right to freedom of worship recognizes children as indirect possessors of rights. In such a negligible manner, the tradition of

Catholic social teaching in relation to rights of children is not totally lost in *DH*. The next section explores the post-Vatican II Catholic social teaching. It illustrates that working children are yet to receive sufficient attention even as a major encyclical, *Laborem Exercens* of John Paul II reflects on human work.

#### **6.4 Catholic social teaching on working children after Vatican II, 1967 – 1995**

##### **6.4.1 *Populorum Progressio* (1967) - Pope Paul VI**

Pope Paul VI's encyclical *Populorum Progressio* (hereafter *PP*) reasserts the duty of the Catholic Church in “shedding the light of the Gospel on the social questions of their times” (*PP*, 2). *PP* establishes the connection between Christian belief and socio-economic justice for all and insists that the social question has become political and global. It is addressed to all people of goodwill like John XXIII's *Pacem in Terris* (*PP*, 83). It does not address the situation of working children.

It places the issue of social justice above capital, labour and class relation, within an international context. *PP* identifies the reasons for underdevelopment in our world such as education, influences of colonialism, and unrefined economics (*PP*, 6-11). The increasing gap between the rich nations and the impoverished nations of the world have added to the contrasts between industrialized nations and nations with developing economy. *PP* insists on the need to address underdevelopment from international perspectives not just at the local levels. “In the present day, however, individual and group effort within these countries is no longer enough. The world situation requires the concerted effort of everyone, a thorough examination of every facet of the problem - social, economic, cultural and spiritual” (*PP*, 9). This

development is not pinned to economics; it extends to the development of humanity, from a less human condition of life to a more human condition of life.

*PP* offers a Catholic response to material wealth and development (*PP*, 22-33). It places the right to private property below the primary and legitimate need for food, shelter, access to health and education. It insists that social purpose of private property has to be respected. It spells out the need for the government to be more involved in providing the appropriate means that will enhance human development, especially in developing and poor nations of the world.

*PP* calls for a better distribution of wealth through charity outlets, just trade relations and aid programmes (*PP*, 43 - 60). It recognizes the need to assist developing nations in attending to uncountable numbers of children suffering. What the document said about children's condition then is still true in our times:

Today no one can be unaware of the fact that on some continents countless men and women are ravished by hunger and countless children are undernourished. Many children die at an early age; many more of them find their physical and mental growth retarded. Thus whole populations are immersed in pitiable circumstances and lose heart.

(*PP*, 45).

*PP* appeals to both individuals and nations of the world to rescue destitute families and alleviate the sufferings of the poor, including "countless innocent children" (*PP*, 80) and insists that "the moment for action has reached a critical juncture" (*PP*, 80). The need to help poor nations should be based on the love of God and of persons. Technological and material progress should not be allowed to diminish the humanistic foundations of economic justice and support among the nations of the world. It admonishes that: "Genuine progress does not consist in wealth sought for

personal comfort or for its own sake; rather it consists in an economic order designed for the welfare of the human person, where the daily bread that each man receives reflects the glow of brotherly love and the helping hand of God” (*PP*, 86).

Covertly, *PP*’s advocacy for a global response to suffering children and poverty could be seen as an indirect way of attending to one of the primary causes of child labour especially in developing countries like Nigeria. It makes only a passing reference to children and does not give attention to working children. The needed focused attention to the rights of working children is not contained in a post-Vatican II encyclical of this sort. However, since it addresses the gap between developed and developing nations through a global response, it could be seen as implicitly fighting against child poverty which exposes working children to economic exploitation.

#### **6.4.2 *Octogesima Adveniens* (1971) - Pope Paul VI**

On 14 May 1971, Paul VI issued *Octogesima Adveniens* (hereafter *OA*). *OA* calls on Christians to be involved in social and political reforms in society. It marked the eightieth anniversary of Leo XIII’s *Rerum Novarum*. *OA* came to light in the wake of the need for renewal in local and international contexts. *OA* is an apostolic letter and not an encyclical. However, it has similar content and form to an encyclical except that it was a form of letter written by Paul VI to the President of the Council of the Laity and of the Pontifical Commission for Justice and Peace, Cardinal Maurice Roy. It has been suggested that: “Because of the startlingly negative reception accorded his encyclical on birth control, *Humanae Vitae* (1968), Paul VI designated none of his subsequent documents as encyclicals” (McBrien, 1993:159).



*OA* calls attention to the need for justice on the part of the people and in relation to contextual situations all over the world. It agrees that a universal solution of various situations would seem to lack universal validity (*OA*, 4). This awareness in *OA* seems to support the contextualizing of the rights of working children in South East Nigeria, as universal validity is also lacking in child's labour rights legislation and enforcement.

The document highlights the new forms of social problems such as urbanization, the situation of youth, women, workers, discrimination and the challenges posed by migration from poor nations (*OA*, 8-21). In the face of these problems, there is a renewed desire for equality and participation. *OA* acknowledges that the achievement of these aspirations requires more than legislation. It, therefore, calls Christians to contribute to the establishment of the proper political order (*OA*, 22-41). As such, Christian's involvement in such affairs will enable discovery of truth and propagation of the Gospel message (*OA*, 42 - 47).

Furthermore, the document insists that: "Christians who are invited to take up political activity should try to make their choices consistent with the Gospel and, in the framework of a legitimate plurality, to give both personal collective witness to the seriousness of their faith by effective and disinterested service of men" (*OA*, 46). *OA* acknowledges the importance of the local community and the need to devise multiple solutions to varying contextual problems. It insists that: "In concrete situations, and taking account of solidarity in each person's life, one must recognize a legitimate variety of possible options. The same Christian faith can lead to different

commitments” (*OA*, 50). There is no mention of children or working children in the apostolic letter, though its acknowledgement of the relevance of local community, the uniqueness of the epistemic community, could be useful in promoting the rights of working children in particular contexts, such as South East Nigeria. In this way, *OA* makes a significant contribution for the development of Catholic social teaching at local contexts.

#### **6.4.3 *Laborem Exercens* (1981) - Pope John Paul II**

Pope John Paul II issued *Laborem Exercens* (hereafter *LE*) in 1981, to mark the 90<sup>th</sup> anniversary of *Rerum Novarum*. This is a well thought out reflection on human work and the dignity of the worker. However, John Paul II clarified from beginning that he does not “analyse scientifically the consequences” that political, technological and economic changes has brought into the social question of human work (*LE*, 1). He clearly notes that the encyclical fulfils the role of the Catholic Church “to speak out on work from the viewpoint of its human value and of the moral order to which it belongs” (*LE*, 24). The Catholic Church only provides the moral framework for a more technical management by those more competent to address it (McBrien, 1993).

The encyclical is enriched with deep theological and philosophical reflection. John Paul II presents work as a basic dimension through which the “social question” should be considered (*LE*, 1). The profound meaning of work cannot be fully grasped without extolling the dignity of the human person, the worker. *LE* argues for

the moral obligation to link industriousness as a virtue with the social order of work, which will enable man to become, in work, “more a human being” and not be degraded by it not only because of the wearing out of his physical

strength (which, at least up to a certain point, is inevitable), but especially through damage to the dignity and subjectivity that are proper to him. (LE, 9).

Children are only mentioned indirectly while discussing women, their work and motherhood. It recognizes the work that women do, which includes taking care of children (LE, 9). It argues for a family wage for workers:

Just remuneration for the work of an adult who is responsible for a family means remuneration which will suffice for establishing and properly maintaining a family and for providing security for its future. Such remuneration can be given either through what is called a family wage - that is, a single salary given to the head of the family for his work, sufficient for the needs of the family without the other spouse having to take up gainful employment outside the home. (LE, 19).

It emphasizes the need for mothers to undertake the care and education of their children as a primary role in the family (LE, 19).

LE presents the human person as the centre, purpose and end of all social and economic activities. It holds that human beings derive their dignity from work (LE, 1). Categorizing people by the type of work they do is considered irrelevant since the value of work is based on the worker himself and not on the type of work. LE discourages:

the very basis of the ancient differentiation of people into classes according to the kind of work done. This does not mean that, from the objective point of view, human work cannot and must not be rated and qualified in any way. It only means that the primary basis of the value of work is man himself, who is its subject.... Through this conclusion one rightly comes to recognize the pre-eminence of the subjective meaning of work over the objective one. (LE, 6).

It explores the conflict between labour and capital and maintains the priority of labour over capital. LE argues that “the principle of the priority of labour over

capital” has always been part of the Catholic social teaching (*LE*, 12). It explains that the “principle directly concerns the process of production: in this process labour is always a primary efficient cause, while capital, the whole collection of means of production, remains a mere instrument or instrumental cause. This principle is an evident truth that emerges from the whole of man’s historical experience” (*LE*, 12). *LE* makes further contributions in the area of the rights of workers and the spirituality of work.

However, it is surprising that an encyclical of this nature, whose main topic is human work, has no references to the rights of working children. One wonders what could be the cause of such an oversight bearing in mind that the Catholic Church is expected to be a great promoter and protector of the rights of children in theory and in practice. In the next chapter, the researcher would apply *LE*, a modern encyclical that contains Catholic social teaching on human work, to the rights of working children through a theological analysis. It is hoped that this analysis would proffer the desired theologico-legal resource that this research set out to achieve.

#### **6.4.4 *Sollicitudo Rei Socialis* (1987) - Pope John Paul II**

John Paul II’s *Sollicitudo Rei Socialis* (hereafter *SRS*) of 1987 is the “most explicitly ecclesiological of John Paul II’s social encyclicals” (McBrien, 1993:165). The encyclical aims to “lead people to respond, with the support also of rational reflection and the human sciences, to their vocation as responsible builders of earthly society (*SRS*, 1).

Although *SRS* insists that the word of God has to be applied to concrete earthly situations of people's lives in the society, offering "principles for reflection, "criteria for judgment" and "directives for action" (*SRS*, 8), it made no mention of working children. The encyclical in the three references it made to children presented them as "real and unique human persons" (*SRS*, 13). Decrying the menace of poverty, the encyclical identifies children as part of the suffering population:

Without going into an analysis of figures and statistics, it is sufficient to face squarely the reality of an innumerable multitude of people - children, adults and the elderly in other words, real and unique human persons, who are suffering under the intolerable burden of poverty.  
(*SRS*, 13).

The encyclical reflects on the "imbalance and conflicts" in our world which have an impact on people including children. Such unhealthy circumstances and tragedy are expressed in the "hopeless faces of men, women and children who can no longer find a home in a divided and inhospitable world" (*SRS*, 24). Furthermore, the encyclical acknowledges that the essential connection between "authentic development and respect for human rights" is not to be achieved in the ordinary provision of goods and services but especially in respecting and keeping to the rights of individual persons, including the child (*SRS*, 33). *SRS* asserts that:

True development, in keeping with the specific needs of the human being-man or woman, child, adult or old person implies, especially for those who actively share in this process and are responsible for it, a lively awareness of the value of the rights of all and of each person. It likewise implies a lively awareness of the need to respect the right of every individual to the full use of the benefits offered by science and technology.  
(*SRS*, 33).

This places children in a special position in the definition of true development. The realization of "specific needs" of children is to be considered in the definition of

“true development”, and this may include the rights of working children though not explicitly stated in the encyclical.

However, it is disappointing that there is no explicit statement on children and the work they do in *SRS*, an encyclical whose main topic is social concern. Although *SRS* does not explicitly refer to working children, it acknowledges that children are “real unique persons” and makes a connection between “true development” and “respect to the right of every individual”- implicitly including working children (*SRS*, 13 & 33). As such, *SRS* offers a good background that would foster development of the Catholic tradition on the protection of the rights of working children.

#### **6.4.5 *Centesimus Annus* (1991) - Pope John Paul II**

John Paul II’s *Centesimus Annus* (hereafter *CA*) marks the 100<sup>th</sup> anniversary of *Rerum Novarum*. *CA* recalls and calls attention to previous ecclesiological teaching of the Vatican II and various post-conciliar documents including previous social encyclicals of John Paul II. *CA* points out its relevance insisting that: “to teach and spread her social doctrine pertains to the church’s evangelizing mission and is essential part of the Christian message, since this doctrine points to the direct consequences of that message in the life of society and situates daily work and struggles for justice in the context of bearing witness to Christ the Saviour” (*CA*, 5).

*CA* like *Rerum Novarum* of 1891 calls attention to the duration and type of work to be given to women and children. It asserts that work given to women and children

should be different from tasks carried out by men (CA, 7). The encyclical emphasizes workers' "right to the 'limitation of working hours,' the right to legitimate rest and the right of children and women to be treated differently with regard to the type and duration of work" (CA, 7). This affirms that the Catholic Church gives special consideration to women and children, though detailed conditions and practical steps to be taken in protecting the rights of the child worker are not addressed. However, as earlier noted feminist theologians would argue against women being bracketed with children in these contexts.

It also re-affirms Leo XIII's call for a living wage to be paid to the male head of the family. John Paul II insists that: "a workman's wages should be sufficient to enable him to support himself, his wife and his children" (CA, 8). CA protests against contracts between employers and employees that "lack reference to the most elementary justice regarding the employment of children or women" despite "the existence of International Declarations and Conventions on the subject" (CA, 8).

It presents the family founded on marriage as the best environment for the proper development of children. It is in the family that "the mutual gift of self by husband and wife creates an environment in which children can be born and develop their potentialities, become aware of their dignity and prepare to face their unique and individual destiny" (CA, 39). It frowns at the consideration of "children as one of the many 'things' which an individual can have or not have, according to taste, and which compete with other possibilities" (CA, 39). It attributes human rights to a child beginning from the womb to growing up in a natural family environment and sees the family as sacred and as the "sanctuary of life" (CA, 39).

Though a more detailed treatment is given to the protection of the unborn child beginning from the moment of conception in his encyclical *Evangelium Vitae*, the CA makes a reference to it. In asserting the role of the State in situations of transition from totalitarian regimes to democracy, the CA insists that human rights should always be given its proper place, mentioning the rights of the child as a necessity:

It is necessary for peoples in the process of reforming their systems to give democracy an authentic and solid foundation through the explicit recognition of those rights. Among the most important of these rights, mention must be made of the right to life, an integral part of which is the right of the child to develop in the mother's womb from the moment of conception; the right to live in a united family and in a moral environment conducive to the growth of the child's personality...

(CA, 47).

However, CA argues for the protection and development of the child in the natural family but seems not to foresee situations that might endanger the child in the hands of the family members. CA seems not to consider the economic stability of the family to provide the essentials of life for children and possible situations that might lead children to engage in work. Hence, there is lack of guiding principles for the protection of working children in the CA. This situation adds to the *raison d'être* behind the necessity of this research as it aims to provide a theologico-legal resource for working children. From the foregoing, the principal documents of the Catholic Church have not yet given sufficient attention to working children even after a hundred years of the urtext on the social question on human work, *Rerum Novarum* of 1891.



#### **6.4.6 *Evangelium Vitae* (1995) - Pope John Paul II**

John Paul II's *Evangelium Vitae* (hereafter *EV*) is not generally accepted as a Catholic social teaching. Its first reference to children is in the introduction where it situates the joys of a new child and every human birth as springing from the Birth of Christ and Christmas. It holds that "full meaning of every human birth, and the joy which accompanies the Birth of the Messiah is thus seen to be the foundation and fulfilment of joy at every child born into the world" (*EV*, 1).

Generally, it condemns every threat to human dignity and life, especially in relation to the weak and defenceless. It offers a more elaborate discussion of the unborn child than the child. It reaffirms the words of the Vatican II in *GS* (27) in condemning whatever is opposed to life and degrades the human dignity such as: "subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children; as well as disgraceful working conditions, where people are treated as mere instruments of gain rather than as free and responsible persons" (*EV*, 3). *GS* generally frowns at working conditions that detract from the authentic human dignity without making any particular reference to working children. The lack of precise reference to working children might be a pointer that children may not have been part of the consideration in the pronouncement. More so, the guidelines that would offer protection to working adults would differ greatly from that of children. "Disgraceful working conditions" are not only possible in public sector but also in the private sector (*EV*, 3). The presumption that the state and the family would always protect the best interests of working children seems misleading. This sort of situation makes a theologico-legal resource a necessity,

especially in South East Nigeria where child labour is more prominent in the private sector.

It denounces “violence against life done to millions of human beings, especially children, who are forced into poverty, malnutrition and hunger because of an unjust distribution of resources between peoples and between social classes” (*EV*, 10). Children are victims of violence of all sorts, including economic and moral violence. *EV* fails to offer a possible solution to child poverty or at least protect children who work to support the family finances. *EV* decries the high wave of materialism and the “eclipse of the sense of God and of man [that] inevitably leads to a practical materialism, which breeds individualism, utilitarianism and hedonism” and hinders social relationships (*EV*, 23). The encyclical upholds personal dignity, and when this is not observed:

The first to be harmed are women, children, the sick or suffering, and the elderly. The criterion of personal dignity - which demands respect, generosity and service - is replaced by the criterion of efficiency, functionality and usefulness: others are considered not for what they “are”, but for what they “have, do and produce”. This is the supremacy of the strong over the weak. (*EV*, 23).

*EV* refers to “abandoned children, boys and girls and teenagers in difficulty” who need support (*EV*, 26). “True parental love is ready to go beyond the bonds of flesh and blood in order to accept children from other families, offering them whatever is necessary for their well-being and full development” (*EV*, 93). It offers an option of “adoption-at-a-distance”, especially where the reason for abandoning a child is the abject poverty of the family. This method of adoption preserves the rights of the child within the natural family while assistance is still being received from another

person. The parents are also afforded the opportunity of raising their child themselves. *EV* expresses it thus:

Among the various forms of adoption, consideration should be given to adoption-at-a-distance, preferable in cases where the only reason for giving up the child is the extreme poverty of the child's family. Through this type of adoption, parents are given the help needed to support and raise their children, without their being uprooted from their natural environment.  
(*EV*, 93).

*EV* does not deal with children as such but the unborn. Working children were never part of the discussion. The focus on the unborn child calls into question the near total silence on children in a major encyclical of the Catholic Church. Consequently, the Catholic Church has been accused of a certain “hyper-natalism” since its Catholic social teaching “does not defend the lives of born – hungry, impoverished, exploited, abandoned – children with the same zeal as the defence of the unborn child. As we are challenged to a consistent ethic of life, we are also challenged to a consistent ethic of justice for children, born or unborn” (Regan, 2014:1027). Concern for children, and especially working children should be practical and related to particular contexts. More so, this is very necessary, as the conditions of work for children should differ greatly from that of adults. This is in the sense that their bodies are still weak and their education and future development should be protected.

*EV* did not discuss working children, rather it dwelt on the rights of the unborn. In so doing, it could be argued that *EV* upholds the tradition, which is always aware that children even before they are born have rights and these rights need to be protected. As such the awareness the Catholic Church creates in *EV* regarding the need to protect the unborn highlights the age-long tradition she upholds and protects the dignity of every human being. Such awareness is an advantage to a culture that seeks to promote and protect the dignity of the child, including the child worker. The

respect given to the unborn child in *EV* puts to a high level the respect which the Catholic Church accords to children. It may be pertinent to add that such apportioning of dignity and rights to the unborn child are unparalleled in relation to the secular estimation of the dignity of the unborn. The next section goes ahead to show that even in the 21<sup>st</sup> century Catholic Church, Catholic social teaching has not made any significant improvement regarding justice to working children.

## **6.5 21<sup>st</sup> Century Catholic Social teaching on working children, 2004 – 2015**

### **6.5.1 *Compendium of the Social Doctrine of the Church* (2004)**

*Compendium of the Social Doctrine of the Church* (hereafter *CSDC*, 2004) has some references to children in general and a passing reference to working children. At the very beginning of the document, it calls for positive action towards the negligence of “fundamental human rights of so many people, especially children” (*CSDC*, 5). The fifth chapter addresses the family as the vital cell of the society. The family is recognized as a place of learning for children, for “it is in the family that children learn their first and most important lessons of practical wisdom, to which the virtues are connected” (*CSDC*, 210). Children are referred to in the discussion on the purpose of marriage, determining the number of children as belonging to parents, as it is “one of their inalienable rights, to be exercised before God with due consideration of their obligations towards themselves, their children already born, the family and society” (*CSDC*, 234). Children are mentioned in the discussion of the rights of the unborn, adoption, divorce and abuse of reproductive technologies (*CSDC*, 235). The document insists that:

Avoiding recourse to different forms of so-called “assisted procreation” that replace the marriage act means respecting - both in the parents and in the

children that they intend to generate - the integral dignity of the human person. On the other hand, those methods that are meant to lend assistance to the conjugal act or to the attainment of its effects are legitimate.

(*CSDC*, 235).

Children are mentioned in relation to the responsibilities of parents towards the education and upbringing of their children, as the “family has a completely original and irreplaceable role in raising children” (*CSDC*, 239). It insists that “parents are the first educators, not the only educators, of their children” and “parents have the right to found and support educational institutions” (*CSDC*, 240, 241). These references seem to envision an ideal family setting that has all the moral and economic requirements to look after children. It seems not to remember the many children all over the world who have no natural families of their own and are not adopted. In a circumstance where the government has failed for any reasons whatsoever, especially in poor and corrupt countries, children are forced by situations to fend for themselves or at least contribute to their welfare. Such working children seem not to have received any recognition and protection from the *CSDC* (2004).

*CSDC* has some references to children in relation to family (*CSDC*, 244 - 245). *CSDC* insists on the dignity and rights of the child, the social value of childhood, the basic right of the child to be born into a “real family” and to be raised by both parents. It advocates for judicial systems to protect the rights of children, especially the right to be born into a “real family”, and decries that the right “has not always been respected and that today is subject to new violations because of developments in genetic technology” (*CSDC*, 244). It adds that although it is important to protect “every child, but it becomes all the more urgent the smaller the child is and the more it is in need of everything, when it is sick, suffering or handicapped” (*CSDC*, 244).

*CSDC* decries the many injustices that a good number of children suffer all over the world, “due to the lack of favourable conditions for their integral development despite the existence of a specific international juridical instrument for protecting their rights, an instrument that is binding on practically all members of the international community” (*CSDC*, 245). It specifically mentions lack of food supply leading to malnutrition, lack of basic education, improper housing, lack of health care system;

trafficking in children, child labour, the phenomenon of “street children”, the use of children in armed conflicts, child marriage, the use of children for commerce in pornographic material, also in the use of the most modern and sophisticated instruments of social communication... These are criminal acts that must be effectively fought with adequate preventive and penal measures by the determined action of the different authorities involved.

(*CSDC*, 245).

The sixth chapter of the *CSDC* on “Human work” describes “child labour” as a “kind of violence” (*CSDC*, 296). It decries the fact that over a century after the promulgation of *Rerum Novarum*, the menace of child labour persists. While recognizing that benefits accrue from child labour in some national economies, the document firmly asserts that:

the church’s social teaching condemns the increase in “the exploitation of children in the workplace in conditions of veritable slavery.” This exploitation represents a serious violation of human dignity which every person, “no matter how small or how seemingly unimportant in utilitarian terms” is endowed.

(*CSDC*, 296).

Exploitative child labour is regarded as a violation of human dignity and a risk to children’s health (*CSDC*, 301). *CSDC* notes that the “solemn proclamations of human rights” are not observed resulting to many painful realities, including the involvement of children in armed conflicts (*CSDC*, 158). It further condemns the involvement of child soldiers in armed conflicts who are as a result of their tender

age are unaware of the consequences of being “trained to kill” (CSDC, 512). CSDC also mentions children in relation to the education and rehabilitation of children who are involved in armed conflict.

Nevertheless, it has been observed that the CSDC has “thin referencing” from the principal documents of the Catholic social teaching as it discusses the “serious problems of injustice towards children... This “thin” referencing is indicative of the paucity of the explicit references to children in the major documents of Catholic social teaching” (Regan, 2014:1029). If the Catholic Church has only a “thin” reference to children and even a passing reference to working children, it is a pointer to the fact that working children may have been given insufficient attention in Catholic social teaching. The Catholic Church cannot validly claim to love children enough if what concerns working children are not given adequate attention both in theory and in practice. However, CSDC has maintained the tradition of protecting the rights of working children on which a contextualized response to child labour in South East Nigeria could be constructed.

#### **6.5.2 *Caritas in Veritate* (2009) – Pope Benedict XVI**

In 2009, Pope Benedict XVI issued a social encyclical *Caritas in Veritate* (hereafter CV). He highlights themes from Paul VI’s encyclical *Populorum Progressio* (1967), which was celebrated in John Paul II’s encyclical *Sollicitudo Rei Socialis* (1987). Pope Benedict XVI insists that “to desire the *common good* and strive towards it is a *requirement of justice and charity*” (CV, 7). CV explores the relationship between

love and justice, and re-evaluates the notion of integral human development and profit making for the common good.

Children were only mentioned in one section in the whole encyclical in the context of the violation of the dignity of human work as a result of unemployment or underemployment and poverty. *CV* recalls John Paul II's address to workers on 1 May 2000, on the Jubilee of Workers, in which he calls on all to opt for "decent work". Benedict XVI explains further that "decent work" means:

work that is freely chosen, effectively associating workers, both men and women, with the development of their community; work that enables the worker to be respected and free from any form of discrimination; work that makes it possible for families to meet their needs and provide schooling for their children, without the children themselves being forced into labour; work that permits the workers to organize themselves freely, and to make their voices heard; work that leaves enough room for rediscovering one's roots at a personal, familial and spiritual level; work that guarantees those who have retired a decent standard of living.

(*CV*, 63).

However, the preference for "decent work" is important not only in safeguarding adult workers but also would benefit children, in ensuring that children are provided for by their parents and are not forced to work as a result of poverty. It is disappointing to discover that at this moment when child labour has become a global issue, so little attention is given to working children in an encyclical of this nature. Initially, the appeal of John Paul II for "decent work" is not from a major document of the Catholic Church but from his message to workers after Mass during the Jubilee of Workers in May 2000. Hence, *CV* has given it an encyclical status and greater relevance. Nevertheless, what a decent work means for children may need further specifications beyond what the pope has enumerated for adult workers. *CV*



has not given sufficient attention to the preservation of the rights of working children in public and private sectors. However, it could serve as a foundational structure for the wellbeing of working children especially in the provision of a theologico-legal resource for preserving the rights of working children in South East Nigeria.

### **6.5.3 *Evangelii Gaudium* (2013) - Pope Francis**

Pope Francis in *Evangelii Gaudium* (hereafter *EG*) notes that the document does not answer social questions. He maintains that “this Exhortation is not a social document, and for reflection on those different themes we have a most suitable tool in the *Compendium of the Social Doctrine of the Church*, whose use and study I heartily recommend” (*EG*, 184). From the previous study above, it is evident that the *Compendium of the Social Doctrine of the Church* did not give sufficient attention to working children. *EG* asserts that the Catholic Church does not have the upper hand in interpreting or proffering solutions to contemporary social questions. However, the society, especially Catholics look up to the Catholic Church in times of great need or systemic failures for direction. Such systemic failures could refer to the inability of the government to support families and children financially thereby creating room for child labour. The Catholic Church cannot efficiently carry out such a task without a theological resource that is properly situated to a particular setting since the factors that drive and sustain child labour differ from place to place.

*EG* contains a few general references to children that are not in relation to working children. It makes reference to children in relation to the transmission of faith (*EG*, 66 & 70). It refers to the connection between protection of the unborn and defending

the right of every human person, insisting that human beings are ends in themselves and should never be used as means to achieve an end (*EG*, 213). Its reference to the education of children and young people is a reminder of the charitable roles of the Catholic Church in society (*EG*, 76). It mentions children in the discussion of the place of the poor in God's heart. It values children of the poor as it reminds us that "the Saviour was born in a manger, in the midst of animals, like children of poor families" (*EG*, 197). *EG* insists that "God's heart has a special place for the poor, so much so that he himself became poor" and maintains that mercy towards the poor is very crucial for salvation (*EG*, 197). The Catholic Church once again has lost an opportunity to address the conditions of children, especially working children, in one of her principal documents.

#### **6.5.4 *Laudato Si`* (2015) - Pope Francis**

*Laudato Si`* (hereafter *LS*) is an encyclical by Pope Francis addressing environmental and structural problems that require collective solutions. Like John XXIII's *PT*, it is addressed to all humanity. It is the first encyclical totally dedicated to environmental issues and it fills a gap in Catholic social teaching. The encyclical calls all people to recognize the destruction that humanity is inflicting on the environment and the need to care for our common home (*LS*, 3). It addresses the many cultural, philosophical and theological trends of thought and action that adversely affect the relationship within the human family as well as that between the human persons and nature in different occasions.

The human person does not only have the mandate to enjoy the fruits of the earth but also the responsibility to protect the earth so that it will still be fruitful for later generations (*LS*, 67). The ecological crisis that the encyclical set out to address has human origins. Responding to such global crisis requires a global approach, hence a global ecology. *LS* seeks an integral ecology that “clearly respects its human and social dimensions” (*LS*, 137). It calls for a humanism built on the wealth of different fields of knowledge (*LS*, 141). The remedy to impending environmental degradation could be along the lines of interdependence and global consensus in having a common front in protecting the environment instead of individual nations (*LS*, 164). This leads to the need to acknowledge past errors and make a change in our relation with the environment. *LS* insists that “a healthy relationship with creation is one dimension of overall personal conversion” (*LS*, 218).

The encyclical does not specifically talk about children, though children as human beings may have been included in the whole of human family that is being addressed. The attention in this encyclical is focused on structural problems and away from individual rights. The problem of environmental degradation is not solved by claims to individual rights. This encyclical instead approaches environmental degradation as a collective problem demanding common front and global solutions. To this point in the historical terrain of Catholic social teaching, working children remain passively addressed or insufficiently considered as a major concern in the world of work and production.

## 6.6 Concluding Remarks

From the foregoing, it is evident that the rights of working children have not received sufficient attention in Catholic social teaching. Regan (2014) observes that there is a possibility that the principal documents of the Catholic Church responds to the social justice issues in a universal manner so that it is difficult to apply them to specific group of persons, such as working children without a further contextualization and adaptation. Some documents comment on the right of workers in general with no particular attention given to children. There are a number of passing references to working children in Catholic social teaching documents but these are insufficient to deal with the challenging situations of working children in South East Nigeria.

Leo XIII's *Rerum Novarum* of 1891 is concerned with forced labour and children doing suitable work that will not endanger their normal development (*RN*, 42). Pius XI's *Quadragesimo Anno* of 1931 in passing makes reference to protecting the sacred rights of workers including children. It denounces abusing the years of childhood and causing grave dangers to the morals of young people (*QA*, 28, 71 & 135). In 1961, John XXIII's *Mater et Magistra* is concerned about the working conditions of children and exhorts the government to protect the rights of children (*MM*, 13, 20). His encyclical *Pacem in Terris* of 1963 makes reference to the working conditions of young people, denouncing situations that would impair their normal development (*PT*, 19). The conciliar document, *Gaudium et Spes* of 1965 makes a passing reference to the use of children merely as means of making profit economically and denounces degrading working conditions (*GS*, 27). John Paul II's *Centesimus Annus* of 1991 calls attention to the duration and type of work children

do in order not to endanger their normal development (CA, 7). *Compendium of the Social Doctrine of the Church* (2004) admits that the work children do has some benefits and denounces the evil of exploitative child labour (CSDC, 296). It is evident that there are insufficient direct references to working children in the Catholic social teaching. The passing references available seem to refer to the formal sector of the society, while injustice to working children in South East Nigeria thrives also in the informal sector.

Although the Catholic Church has come a long way in embracing human rights, her role in protecting the weak and the vulnerable has yet to extend her reflection on the rights of working children. In recent times, “children have become a new measure of justice for the church *ad intra*, a measure that will determine our credulity to speak on matters of justice for children...” (Regan, 2014:1030). The Catholic Church needs to do more to better protect working children. The Catholic Church needs to do more with regard to social justice for children. The report on clergy child abuse in the Catholic Archdiocese of Dublin, also known as “The Murphy Report”, suggests that the welfare of children was not given the first priority and children were not adequately considered.<sup>46</sup> It is obvious that the Catholic Church (the clergy, religious and laity), needs to step up her care and protection of children all over the world, both in theory and in practice. The responsibility of the Catholic Church in protecting human dignity as demanded by social justice cannot be completely executed without an adequate provision for the rights of working children the world over, including in South East Nigeria. It is true that the Catholic Church has done well in signing and

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<sup>46</sup> For further reading - *Report by Commission of Investigation into Catholic Archdiocese of Dublin* (2009). Available at: <http://www.justice.ie/en/JELR/Pages/PB09000504> (Accessed: 12/12/19).

ratifying three international human rights treaties on children, but one wonders when the Catholic Church might dedicate one of her major encyclicals to the rights of working children. However, the Catholic Church all over the world is engaged in many activities for the welfare of children. Insights from these activities need to be properly articulated to form a more coherent system of social justice for working children. The task of this research to provide a theologico-legal resource through an analysis of the child's rights legislation on working children and Catholic social teaching remains necessary and urgent. Invariably, this would fill a gap by providing a theologico-legal resource for Catholic agencies in the area of working children, facilitating a contextualized response to child labour, especially in South East Nigeria, which is predominantly Catholic.

## CHAPTER 7

### MEANING AND VALUE OF HUMAN WORK IN *LABOREM EXERCENS* AND ITS CONTEXTUAL RELEVANCE TO PRESERVING THE RIGHTS OF WORKING CHILDREN IN SOUTH EAST NIGERIA

#### 7.1 Introduction

The previous chapter revealed the near total absence of references to working children in the principal documents of Catholic social teaching. Most of the documents protected adult workers but failed to give a focused and sufficient attention to working children. Some passing references made to working children in some of the documents were only a few, whether direct or indirect. It is pertinent to recall that the social question concerning human labour has received the attention of various popes. *Rerum Novarum* of Leo XIII (1891) was more concerned about the working class. Apart from the working class, *Quadragesimo Anno* of Pius XI (1931) included the whole nation in its reflection on social justice and the gap between the rich and the poor. *Mater et Magistra* of John XXIII (1961) focused on the weaker members and workers in the society, the poor class of today.

This chapter explores the contextual relevance of *Laborem Exercens* (hereafter *LE*) in preserving the rights of working children in South East Nigeria. It is the key document for this research. This encyclical of John Paul II gives a unique and comprehensive approach to human work. *LE* goes beyond all previous encyclicals to include “industrial, agricultural, clerical, scientific, service-oriented, intellectual work, as well as care of the family. Work is more than paid employment; it is about who we are as well as what we do and produce” (Lamourex, 2004: 393). This

chapter explores *LE* as a modern Catholic social teaching for human labour to identify the places working children should have received attention but were not mentioned. It shall apply the teaching of *LE* to the conditions of working children in order to establish the foundation for a theological analysis of children's rights with Catholic social teaching. Some fundamental information relevant for understanding the encyclical *LE* will be explored in the next section; namely its aims, publication, structure and connection with the urtext encyclical of human work in Catholic social teaching, 1891 *Rerum Novarum* (hereafter *RN*) of Leo XIII.

## **7.2 Understanding *Laborem Exercens***

*Laborem Exercens* (*LE*) is the third encyclical of Pope Saint John Paul II. It is one of his social encyclicals in which social, economic and social justice issues are discussed. As earlier noted, John Paul II published it on September 14, 1981 to commemorate the ninetieth anniversary of *RN* of Leo XIII. John Paul II planned to release the encyclical on 15 May 1981 to mark the 90<sup>th</sup> anniversary of Leo XIII's historical encyclical, *RN*, which was the first to address the condition of workers and subsequently became the urtext on human work for many popes. As a result of the attempted assassination of John Paul II by Mehmet Ali Agca in St Peter's Square on May 13, 1981 during the pope's weekly general audience, *LE* was not released on 15 May 1981 as earlier planned. Its release was delayed as it took the Pope a long time to recover (Lawler, 1981). The encyclical was finally released on 15 September 1981. The encyclical starts with an Introduction (*LE*, 1-3) and has four main chapters. The first chapter is on "Work and the Human Person" (*LE*, 4-10). The second chapter deals with issues bordering on "Conflict between Labour and Capital in the Present Phase of History" (*LE*, 11-15). The next chapter discusses the "Rights



of Workers” (*LE*, 16-23) and finally, the last chapter reflects on the “Elements for the Spirituality of Work” (*LE*, 24-27).

### **7.2.1 Aim of the encyclical, *Laborem Exercens***

In *LE*, John Paul II sets out the principles of social justice in response to new questions and problems associated with human work since the Industrial Revolution in the United States of America and Europe, which has had a significant impact on the dignity and rights of workers. Ideologies and practices of capitalism in the West and communism in some societies in Eastern Europe posed new challenges to human work and human dignity. John Paul II felt the need for reorganisation and adjustment of the structure of work. The changes in the world of work that necessitated a response include; limitations of earth’s resources, use of automation and developments in technology, increase in the cost of energy and raw materials, environmental degradation, the impact of multinational, unemployment and other work-related problems at national, international and multinational dimensions. John Paul II recognizes that work is key to social question (*LE*, 3). In *LE*, he sets out to respond specifically to the challenges of “new developments in technological, economic and political conditions” which have influence on the “world of work and production” (*LE*, 1).

### **7.2.2 Karol Wojtyla and his personal experience of the world of work**

Karol Wojtyla, who took the name John Paul II in his papacy, had first-hand information regarding the dangerous world of labourers during the Nazi occupation

at the stone quarry of Zakrzówek and Solvay chemical factory in Borek Falecki. At this time the Krakow's Jagiellonian University was closed down in 1939 and the young Karol had to work in the stone quarry of Zakrzówek and Solvay chemical factory "to earn his living and avoid being deported to Germany" (Holy Office Press Office, 2005). The quarry is in a deep pit of limestone, hundreds of feet below the ground. It is cold and dangerous, having miniature railway cars, through which limestone is transported from the pit up to the level ground. Karol Wojtyła came to know and feel the living situations of the workers, their families, and their human needs. His insightful vision of work is in a collection of poems published under the title "The Quarry", being a reflection on human work within the industrial setting, in the pit of Zakrzówek:

Listen, when cadences of knocking hammers so much their own

I transfer into our inner life, to test the strength of each blow –

Listen: electric current cuts through a river of rock –

Then the thought grows in me day after day

The whole greatness of this work dwells inside a man.

(Wojtyła cited in: Weigel, 2001:58).

The last line of the poem concludes that "the whole greatness of this work dwells inside a man." This implies that even before he became the pope, he already regarded human being, the worker as having priority over the means of production. This follows from the fact that the poem places the greatness of work on the human person. Consequently, the human person, the worker defines work. This deep understanding of work will later be developed in his encyclical, *LE*.

### 7.2.3 What shaped Karol Wojtyla's thoughts before the encyclical, *Laborem Exercens*

There are two new ideas in *Laborem Exercens*; namely the spirituality of human work and the inviolable dignity of the worker which were first addressed to the people during his homily in a number of occasions (Rossi, 1981). *LE* is built on the Christocentric perspective of theological anthropology, which understands the human person in the light of Jesus Christ, who is Himself the perfection of the human person. This idea is perhaps derived from *Gaudium et Spes* (hereafter *GS*) as Karol Wojtyla was one of the bishops that participated in and contributed to the debates following the drafting of the conciliar document. There are traces of the pope's Christocentric theological anthropology in his first encyclical *Redemptor Hominis* (hereafter *RH*) published on March 4, 1979 five months after being elected pope on October 16, 1978. *RH* stresses that Christ the Redeemer "fully reveals man to himself" within "the human dimension of the mystery of the Redemption. In this dimension man finds again the greatness, dignity and value that belongs to his humanity" (*RH*, 10).

The mind-set for this encyclical *LE*, grew out of John Paul II's visits and contacts with the complexity of the workers' world in its domestic and international dimensions. The early visits he made to Mexico, Poland and Italy opened up the sufferings and aspiration of the working class. In these visits, he roundly affirmed workers' rights to form an association to promote and defend their interests. The Pope may have been influenced by the social context of the world of work in Poland as a result of the crisis between the Polish government and the trade union

movement, called Solidarity (*Solidarnosc*). The Soviet Union leadership wanted to compulsorily stop the movement but John Paul II intervened and gave them all the support. This does not seem to suggest that the whole encyclical is a response to the crisis in Poland. However, one cannot deny that John Paul II while articulating the encyclical has the Poland labour crisis in mind as well (Lamoureux, 2004).

The Pope also had in mind the challenges faced by workers in developing countries of the world. In doing this, he kept to the traditions of the Catholic Church's teaching as he benefits from various trends of thought. While extracting from their insights and arguments, he transcends them giving rise to a new set of principles. He applied personalist arguments to define his stand on the human person. Baum (1982) remarks:

Against the individualists, personalism argued that the person was essentially social: a person came to be through collaboration with others. And against Marxists, personalism argued that even in the joint effort to build society, people remained persons, subjects, bearers of an inner life of transcendent value.

(Baum, 1982:4).

John Paul II has “consistently demonstrated a personalist vocabulary, style and approach to problems” in his writings, especially in *LE*. It could be as a result of the influence from his study of personalism, phenomenology and existentialism. His focus of studies was on Emmanuel Mounier, Gabriel Marcel, Martin Buber, and Max Scheler on whom he wrote his second dissertation. The phenomenology of Scheler combined with the traditional neo-scholastic training that John Paul II received. Scholars are not in agreement on which philosophical tradition he maintains, but the fact is that both the Thomistic influence and phenomenological method are employed in his personalist reflection in *LE* (Lamoureux, 2004).

*LE* like previous encyclicals placed the human person at the centre of its discussion as it has been with other documents of Catholic social teaching. Following the example of Catholic social teaching; namely, John XXIII's *Pacem in Terris* of 1963, Vatican II documents *Dignitatis humane* of 1965 and *Gaudium et Spes* of 1965, John Paul II expresses a deep connection between person's self-realization and human labour. John Paul II in this encyclical addresses some other aspects not considered in previous documents of the Catholic Church; such as, the interdependence of nations because of the unequal distribution of the earth's resources (*LE*, 17), the employment and treatment of the handicapped, and consideration for the "physical and psychological working conditions of disabled people" (*LE*, 22), and the needs of migrant workers (*LE*, 23).

#### **7.2.4 Structure of the encyclical, *Laborem Exercens***

*LE*'s methodological structure is open and flexible to a wide arena of historic and cultural settings because the analysis of human labour is done at the foundational level of human dignity, and not at the prescriptive level. Since it is at the foundational level, it helps other cultures and nations to develop it in order to be relevant to their particular contexts. More so, human dignity and other moral law principles such as justice, human rights, the common good are located within the theological framework of revelation in the Bible, precisely, the book of Genesis. John Paul II did not rely on natural law methodology alone but instead established a connection between Scripture and natural law, and moved on to an explicitly theological framework. With the connection of human labour and mandate as coming from God as in *Genesis* 1:26 - 28, work is seen not as a punishment but a

participation in God's creative work, before Adam and Eve committed original sin. Therefore, creation is seen as a continuing act in which a human being is called in "to be a partner in the work of bringing God's creation to perfection" (*GS*, 67). His style of writing is beneficial when applied to contexts that value Scripture and natural law tradition. The discussion on the social question of human work using the language of the natural law and the Scripture will benefit a theological analysis of the rights of working children with Catholic social teaching, for use in an area that is predominantly made up of Catholic Christians.

John Paul II's comments on social and political issues go beyond an ordinary political response to the problems of workers. It tends to promote the highest moral values at any given time no matter how good a system of government is. *LE* deals with the problem of human work and the need to attend to such problems. Though his reflections presented a theological and philosophical foundation that will enhance the promotion of human dignity and human work, it failed to give a particular solution to the problems of human work. It could be said that the basic contribution of *LE* is the provision of a new philosophy of work, a formidable foundation on which a good work ethic could be constructed.

In so far as there was no explicit exemption of children's work in *LE*, it provides a good foundation for a contextualized response to child labour in South East Nigeria and formation of a good ethic of work that preserves the rights of working children. Lawler (1981) affirms that "the most pressing social need is not for grand government schemes, but for the construction of sound, understandable philosophy of work" (Lawler, 1981: iii). It is understood that *LE* responds to the crisis on the

meaning of work as a result of the contemporary all-pervasive materialistic outlook that favours exaggerated material progress and consumption over human needs and the person, the worker. Such lopsided meaning of work should not be allowed to thrive among working children the world over, especially in South East Nigeria where children's work is more in the unsupervised informal sector. So far, we have briefly investigated what influenced John Paul II's frame of reference as regards the world of work and production. Although he did not specifically reflect on working children, the following sections explore the contextual relevance of *LE* in preserving the rights of working children in South East Nigeria under various themes.

### **7.3 Meaning of Human Work**

Owing to challenges and questions in the world of work and production, a discovery of the new meanings of work is a necessity. John Paul II is aware of the new waves of exploitation arising from technology as well as world politics; such as communism of European countries and capitalism of the West. Neither industrialization nor political ideologies should be allowed to becloud the value and virtue of work. In addressing this social question, it could be suggested that John Paul II's understanding of labour is closely related to his view of the human being, God and the whole of creation. He did not propose his understanding of human being and the world of work from *apriori* principles, rather his reflections are deeply rooted in human being's existential reality, *aposterori* principles. The Christian view concerning the Fall and Redemption and human being's eternal destiny in Christ also reflected in his understanding of labour (Stanmeyer, 1981).

### 7.3.1 Definition of work

In the “Preface”, John Paul II maintains that human being is called to work and that work is understood as:

any activity by man, whether manual or intellectual, whatever its nature or circumstances; it means any human activity that can and must be recognized as work, in the midst of all the many activities of which man is capable and to which he is predisposed by his very natures, by virtue of humanity itself. Man is made to be in the visible universe an image and likeness of God himself, and he is placed in it in order to subdue the earth.

Work is essential to all social questions (*LE*, 3). The biblical relevance of work is situated in the Book of Genesis, in the Gospels and other writings of the New Testament. A human being reflects God through work. A human being was created in the image of God. A human being as an image of God is given an injunction by God to subdue and dominate the earth (*LE*, 4). In carrying out this mandate, human beings reflect God, the creator of all that exists. The definition of work in *LE* has a wide scope and refers to an activity. In Genesis 1:28 the biblical injunction from God as the Creator calls upon human being to: “Be fruitful and multiply and fill the earth and subdue it; and have dominion over the fish of the sea and over the birds of the air and over every living thing that moves upon the earth.” It is a blessing given to human beings by God, created in his own image and likeness (*Genesis* 1:26). *LE* commenting on *Genesis* 1:28 holds that:

even though these words do not refer directly and explicitly to work, beyond any doubt they indirectly indicate an activity for man to carry out in the world. Indeed, they show its very deepest essence. Man is the image of God partly through the mandate received from his creator to subdue, to dominate, the earth. In carrying out this mandate, man, every human being, reflects the very action of the creator of the universe.

(*LE*, 4).



It is an invitation from God to participate in his creative activity. This means that from the beginning, human being is called to work.

Over and above the conventional understanding of human work, *LE* extends work to all forms of activities that in some measure relate to the execution of this mandate. This means that work in the office or industry, manual or brainwork, work as educator, craftsman, technician, supervisor, manager or housewife are all the same in the world of work. Work refers to both paid and unpaid jobs. In fact, “each and every individual, to the proper extent and in an incalculable number of ways, takes part in the giant process whereby man subdues the earth through work” (*LE*, 4). All members of the society through what they do contribute to the growth of the society, or ought to contribute to the growth of the society by sharing in the means of production.

Whereas children are not explicitly mentioned in *LE*, to acknowledge especially the value of unpaid and manual jobs is an advantage in assessing the work children do in South East Nigeria, as some family jobs are unpaid jobs yet they contribute to the whole economic system. Since the mandate to work is given to human beings alone implicitly including children, and not to animals, it is also a uniting factor for all humanity. People of all nations, ethnic group, cultures, religions and language are all united by work thereby making work a uniting and universal reality.

Through work, the current generation benefits from a previous generation. *LE* maintains that work is a “transitive” activity; an “activity beginning in the human subject and directed toward an external object” (*LE*, 4). Though work is a transitive

activity, and human being is destined to work, *LE* insists that “work is ‘for man’ and not man ‘for work’” (*LE*, 6).

Working children contribute to the growth of the society in their own measure. Children are workers in their own unique class, different from adult workers, in a manner that work does not come into conflict with specific rights that are reserved for children such as, the right to education. *LE* argues that work should be at the service of a human being. This research therefore suggests that to preserve and protect the dignity of the human being as a worker, including working children, the rights of workers should be upheld.

### **7.3.2 Objective dimension of work**

A distinction is made between work in the objective sense and work in the subjective sense. Work in the objective sense refers to technology and the whole instruments that human being employs in the field of work. Work in the objective sense “finds expression in various epochs of culture and civilization” (*LE*, 5). *LE* goes ahead to enumerate three ways in which work is to be understood in an objective sense; namely in domesticating animals, agriculture and industry. Domesticating animals involves tending them and obtaining food and clothing from them; in agriculture, human being cultivates the earth, transforms its products and adapts them to his usage; in industry, human being links the earth’s resources with his intellectual and physical work in order to produce goods needed to better life, increase his production and renew the face of the earth (*LE*, 5). Although human work has progressed from nomadic sphere through an agricultural sphere to the current industrial and

technological age in developed countries, animal husbandry and agriculture remain a common practice in South East Nigeria.

Work in the objective sense has been a great factor in the manner human work is understood generally. *LE* acknowledges that in the field of work today, there are highly perfected machines, electronics and other high technology equipment, which have many benefits for human beings but also present some problems and dangers to human beings. Technology can work for and against human beings in the world of work and production. Technology can cease to be human being's partner in work and become almost his opponent when the "mechanization of work 'supplants' the person, taking away all personal satisfaction and the incentive to creativity and responsibility, when it deprives many workers of their previous employment, or when, through exalting the machine, it reduces man to the status of its slave" (*LE*, 5). *LE* underscores that although human being is dependent on work for existence and progress yet human being should never be a slave to work, but its master. *LE* is aware that some societies have affirmed technology as a basic coefficient of human being, the instruments should always serve the purpose of human being for "even in the age of ever more mechanized work, the proper subject of work continues to be man" (*LE*, 5). It is, therefore, very important to see that all "obsessing and alienating work, of technology becoming man's master instead of the tool for his labour, of work that limits and restricts personal freedom and thereby reduces the dignity of the working man" are eliminated (Ike, 1986: 217).

However, *LE* has failed to recognize the peculiar challenges which working children face in the developing countries that are yet to have a fully mechanized system of

work, such as Nigeria. Working children must be considered the subjects of work irrespective of whether their work is mechanized or not. Working children should never engage in any work that reduces their dignity as human beings. Invariably, this reality appeals to the rights of working children as a necessity, especially in South East Nigeria.

### **7.3.3 Subjective dimension of work**

Work in the subjective sense refers to the human being who does the work irrespective of the level of mechanization (*LE*, 6). The subjective sense of work exposes the faults of systems and schools of thought that view human relations in the world of work as having only economic relevance. The subjective sense of work is also evident in the Book of Genesis where human being is told to “subdue” the earth (Gen. 1:28). *LE* argues that from a subjective point of view:

Man has to subdue the earth and dominate it, because as the “image of God” he is a person, that is to say, a subject being capable of acting in a planned and rational way, capable of deciding about himself and with a tendency to self-realisation. As a person, man is, therefore, the subject of work. As a person he works, he performs various actions belonging to the work process; independently of their objective content, these actions must all serve to realize his humanity, to fulfil the calling to be a person that is by reason of his very humanity.

(*LE*, 6).

The dignity of work is to be primarily discovered in the subjective dimension of work.

The researcher argues that since working children make use of their reasoning as they work, children are therefore included in the world of work and their dignity should be preserved through the provisions of rights for working children.

The virtue and value of work will not be properly grasped without highlighting the involvement of Jesus in manual work. Jesus has given a “gospel of work” by participating in human labour as a carpenter (*LE*, 6). This confirms that “the basis for determining the value of human work is not primarily the kind of work being done, but the fact that the one who is doing it is a person” (*LE*, 6). Categorizing people by the type of work they do is not necessary since it is the subject, a human being, the worker, who gives meaning and value to work (*LE*, 6). A human being as a worker should not be seen as one of the means of production but as an end in himself or herself.

Accordingly, the researcher argues that working children should also be seen as an end in themselves in the work they do. The example of Jesus Christ as a carpenter involved in manual work seems to ennoble the works of children in South East Nigeria since much of their works are manual. Working children are mainly involved in manual work or in the informal private sector of the economy. This does not devalue their work or dehumanize their persons. Thus, “the value of work is not what is produced externally, but the inner spiritualization of the person who works, and thus that even menial and hidden labour, if done ‘in and through Christ’ is of great value” (Stanmeyer, 1981: 41). This line of thought gives and preserves the dignity of working children and the work they do even when the work they do seem to be of less economic value. Children are to be encouraged to do their work in and through Christ in order to enhance the value of the work they do. To achieve this, their human dignity as workers should not only be preserved with theological standards

contained in the Catholic social teaching but also legally, employing the rights of working children.

Human being remains the primary basis of the value of work and not the instruments of work or the type of work. *LE* notes that “dominion” in Genesis refers to both the objective and subjective sense. It goes further to place the subjective sense of work over the objective dimension of work. *LE* asserts that:

This dominion, in a certain sense, refers to the subjective dimension even more than the objective one: this dimension conditions the very ethical value of its own, which clearly and directly remains linked to the fact that the one who carries it out is a person, a conscious and free subject, that is to say, a subject that decides about himself.

(*LE*, 6).

This teaching is in line with a long-held tradition of the Catholic Church. In *GS*, the Second Vatican Council states: “according to the almost unanimous opinion of believers and unbelievers, all things on earth should be related to man as their centre and crown” (*GS*, 12). So by reason of the subject of work, that is human being, implicitly including the child worker; work remains a single thing while by reason of its objective dimension, there exist many types of work. *LE* in order to impress on a materialistic world the new way of understanding human work, repeats in many places the pre-eminence of person over things, the primacy of ethics over technology and the priority of labour over capital. With this, the differentiation of people into classes according to the type of work they do, manual or intellectual, menial or official, paid or unpaid becomes less important in the world of work and production.

Hence, the work children do ought to be accorded the dignity it deserves and working children are pre-eminent over material things and capital. This theological position should be complemented by the effective enforcement and realization of the rights of working children. With this new manner of approaching human work, the

researcher uses the words of *LE* to argue that all kinds of job, including work done by children, should be:

judged above all by the measure of the dignity of the subject of work, that is to say, the person, the individual who carries it out... in the final analysis, it is always man who is the purpose of the work, whatever work it is that is done by man – even if the common scale of values rates it as the merest “service”, as the most monotonous, even the most alienating work.

(*LE*, 6).

#### **7.3.4 Work as a means of livelihood**

Work is a necessary means of sustaining existence and livelihood. The Bible maintains in Genesis 3:17 that it is “in sweat of your face you shall eat”. *LE* has an understanding that material benefit from work is relevant for the sustenance of the family and to support the development of the world technology. For “it is true that man eats the bread produced by the work of his hands – and this means not only the daily bread by which his body keeps alive but also the bread of science and progress, civilization and culture” (*LE*, 1). The type of work and the challenges that come from them varies according to human and technological progress. Through work, human beings earn a livelihood. *LE* places work at the centre of the social question since it is “a fundamental dimension of man’s existence on earth” (*LE*, 4). Work is necessary for the sustenance of human beings. Therefore, the progress of science and technology is confirmed by the biblical passage “in the sweat of your face you shall eat” as well as the practical life experience of human beings on earth. Notably, children through the work they do contribute to their family upkeep especially in Africa where children’s rights and responsibilities are seen as two sides of the same coin, as in articles 15 and 31 of the regional 1990 *African Charter on the Rights and Welfare of the Child* (ACRWC). Article 15 of ACRWC prohibits exploitative child

labour practices in both formal and informal sectors and calls on state parties to enforce child labour legislation. This article is aware that work has financial benefits as it calls on state parties to legislate on “minimum wages for admission to every employment” in article 15 (2a). Article 31 of *ACRWC* makes it clear that children have responsibilities towards the family, society and state. Examples of such responsibilities include, duty to strengthen the integrity and unity of family, society and state, preserving African cultural and moral values, and to assist their parents in case of need. These responsibilities are to be carried out within the boundaries of other rights of the child. However, children’s responsibilities towards the family, society and state do not militate against other rights of the child as in the *ACRWC*, such as the right to free and compulsory education as in article 11, the right to leisure, recreation and cultural activities as in article 12, and the right to parental care and protection as in article 20. As such, the right of the child to work should not be taken or understood in isolation of other rights that specifically belong to children.

It is evident, however, that there are people who are in plenty while others are starving; either as nations or as individuals. This situation has a universal character as Paul VI (1967) notes in *Populorum Progressio*:

Today it is most important to understand and appreciate that the social question ties all men together, in every part of the world... The hungry nations of the world cry out to the people blessed with abundance. And the Church, cut to the quick by this cry, asks each and every man to hear his brother’s pleas and answer lovingly.

(*PP*, 3).

There is a need to work on the social structures so that workers all over the world will be treated justly. *LE*’s notion that human beings will eat by the “sweat of the face” does not only refer to “personal efforts and toil”, it includes the struggle “in the



midst of tensions, conflicts and crises, which, in relationship with the reality of work, disturb the life of individual societies and also of all humanity” (*LE*, 1).

### **7.3.5 The intrinsic value of work**

The pains and toils of human work seem to becloud the intrinsic value of human labour. Work might appear to be dehumanizing especially when one remembers that it was part of the consequences of the fall of Adam and Eve, that is, the Original sin. *LE* emphasizes the value and virtue of work. It describes work as a blessing and not a curse. The Biblical injunction “to subdue” the earth and to have dominion over all creatures given to human being sanctifies work and makes it an avenue of partaking in God’s creative act. Through work, therefore, human being transforms the earth and realizes his humanity more (*LE*, 6). Although work comes with toil, it is still good for human being not only as a result of the material benefits but because it transforms human being as well. Thus *LE* states:

in spite of all this toil - perhaps, in a sense, because of it - work is a good thing for man.... this does not take away the fact that, as such, it is a good thing for man. It is not only good in the sense that it is useful or something to enjoy; it is also good as being something worthy... Work is a good thing for man - a good thing for his humanity - because through work man not only transforms nature, adapting it to his own needs, but he also achieves fulfilment as a human being and indeed, in a sense, becomes “more a human being”.

(*LE*, 9).

This is what defines work and makes work a virtuous act. This ethical meaning of work is what gives work a profound value. Therefore, children’s work has profound value and shares in the dignity of work. Work is a virtuous act and makes working children realize more fully their humanity through work.

### **7.3.6 Work and its relevance to the family and the world**

Work is not only beneficial to the individual but also to the life in the family and the society. Work is at the foundation of family life since the family is the place where children receive their primary education regarding work. Work is in the best interest of children because it helps in their integral growth and development. Work is relevant to family because from its material gains supports family is sustained. The work of individuals and families is beneficial to growth in culture and society, as “work constitutes a foundation for the formation of family life, which is a natural right and something that man is called to do” (*LE*, 10).

Since work is seen as a natural right children should be encouraged to exercise their natural rights by engaging in meaningful works that preserve their human dignity. As earlier stated, children are workers in their own terms (not as adults are workers), in a manner that work does not militate against other rights that are specific to children such as, the right to education. Family as the first school of work opens up a new perspective in Catholic social teaching that should be explored. Since the family is where children are prepared for work, the family reflects the labouring society. In the labouring society, there is exploitation of labour in various ways. This does not only affect the family but the injustices are also present in the family (Baum, 1982). Injustice towards working children in family settings calls for attention and contextualized response through a theological and human rights framework.

## 7.4 Dignity of work and personal dignity

In a homily delivered by John Paul II in Poland in 1979, long before he articulated his encyclical *LE*, he maintains the Church's tradition of placing human being at the centre of creation. In his homily<sup>47</sup>, as if talking to us even today, he asserts:

The problems being raised today – and is it really only today? - about human labour do not, in fact, come down in the last analysis – I say this with respect for all the specialists – either to technology or even to economics but to a fundamental category: *the category of the dignity of work*, that is to say, of *the dignity of man*. ...The fundamental category is *humanistic*. I make bold to say that this fundamental category, the category of work as a measure of the dignity of man, is *Christian*. We find it in its highest degree of intensity in Christ.

(*Homily of His Holiness John Paul II*, 2).

The Pope insists in the homily that if other specializations such as, economics and technology do not have their justification based on the category of the dignity of human labour, they will become harmful to human being and are mistaken. He expressed this stance earlier in his encyclical *Redemptor Hominis* (hereafter *RH*), published in 1979 before *LE*.<sup>48</sup> In *RH*, John Paul II places human being at the centre. He asserts that “Man is the primary route that the church must travel in fulfilling her mission; he is the primary and fundamental way for the church, the way traced out by Christ himself” (*RH*, 14). As such, the problem of human labour for John Paul II boils down to the dignity of human being and human labour. As Ike (1986)

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<sup>47</sup> For further reading see John Paul II (1979) *Homily at Nowa Huta Poland, 9 June 1979*. Available at: [http://w2.vatican.va/content/john-paul-ii/en/homilies/1979/documents/hf\\_jp-ii\\_hom\\_19790609\\_polonia-mogila-nowa-huta.html](http://w2.vatican.va/content/john-paul-ii/en/homilies/1979/documents/hf_jp-ii_hom_19790609_polonia-mogila-nowa-huta.html) (Accessed: 17/09/17).

<sup>48</sup> It is noteworthy that John Paul II already laid the foundation of his thought in his first encyclical *Redemptor hominis*, which was promulgated on 4 March 1979 even before the homily he delivered at the Shrine of the Holy Cross in Mogila, Poland on 9 June 1979. The idea that human being is to be seen as the centre and basis of human work was planted earlier before it finally blossomed later in *LE*.

understands *LE*: “The primary basis of the value of work is MAN. Man is the fundamental category from which all work derives its dignity.” (Ike, 1986: 226).

In a similar manner, if the work done by children is not based on the dignity of human labour, it falls short of work that is fundamentally humanistic. It is human being that gives meaning to work; it is children that give meaning to the work they do. In this way, the inestimable value of working children is preserved and protected over and above the work they do. This should evoke the support for the rights of working children in ensuring that their dignity is preserved.

#### **7.4.1 The human person – the worker**

John Paul II clarifies in this encyclical, *LE* that it is not the Catholic Church’s role to “analyse scientifically” the changes in the world of work and production (*LE*, 1). The Catholic Church, rather, strives to call attention to situations where the rights and dignity of the human person are violated. In order to uphold the dignity of the human person in the world of work, *LE* calls for “the discovery of the new meanings of human work” (*LE*, 2). It could be asserted that *LE* made the human person the centre, purpose and end of all social and economic activities. *LE* developed a unique Christian anthropology that understands work from the view of the human person that works.

It follows that every worker, including a child worker, is a person, created and redeemed by God and as such possesses the dignity of the child of God. In this sense, work is not defined from the point of view of what work is done, objective meaning

of work, rather from the perspective of the person who does the work, the subjective meaning of work. It is the person who works that gives meaning to what he or she does. This manner of understanding work from the point of view of the worker ennobles working children and the work they do. In South East Nigeria, some of the work children do seems to be taken for granted, such as climbing a tall tree to harvest its fruits.

In his homily to workers in Nigeria, delivered at Holy Cross Cathedral on February 16, 1982, John Paul II<sup>49</sup> reasons that “People who work enjoy a God-given dignity. God could have created everything in its final form, but he decided differently. For God wants us to be associated with him in the improvement of the things he has made” (*Homily of John Paul II*, 4). This research argues that working children are part of the human family that share in the God-given dignity as workers. It could be argued that John Paul II’s reflection on human work is geared towards preserving the dignity of the human person that works contrary to the capitalist and communist culture of the time. In the context of South East Nigeria, it could be applied to protect the dignity of working children.

#### **7.4.2 Human beings as workers**

*LE* maintains that work is specifically a human activity. A human being, unlike other animals, is a *homo laborem exercens*, “man” exercising labour. Since work can and is only performed by human beings, it raises work to a higher dignity. A human

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<sup>49</sup> For further reading see John Paul II (1982) *Homily to Nigerian workers, Feb. 1982*. [http://w2.vatican.va/content/john-paul-ii/en/homilies/1982/documents/hf\\_jp-ii\\_hom\\_19820216\\_lavoratori-lagos.html](http://w2.vatican.va/content/john-paul-ii/en/homilies/1982/documents/hf_jp-ii_hom_19820216_lavoratori-lagos.html) (Accessed: 17/09/17).

being is defined by labour. Only human beings can work; unlike animals that are propelled by their instincts for survival, human beings are propelled by reason and freedom to struggle for survival and development. Animals are driven by instinct of self-preservation in their activities because they do not seek self-realization like human beings. It is from work that human beings and the society are built up. Human beings derive specific dignity from work (*LE*, 1). Human being in the midst of all other creatures of God alone can work. John Paul II says in the “Preface” of *LE* that:

Work is one of the characteristics that distinguish man from the rest of the creatures, whose activity for sustaining their lives cannot be called work. Only man is capable of work, and only man works, at the same time by work occupying his existence on earth. Thus, work bears a particular mark of man and of humanity, the mark of a person operating within a community of persons. And this mark decides its interior characteristics; in a sense, it constitutes its very nature.

The Pope chose to define human being as labourer among many other possible definitions of human being in *LE* due to “its historical usefulness and its transformative power” (Baum, 1982: 11). John Paul II traces the definition of a human being as a worker based on the Bible, precisely in Genesis 1:26-28. Jesus was a carpenter, a worker. Human beings were not defined by work in the thoughts of the aristocratic time and philosophy but by reasoning. However,

Defining the human being in term of labour, we note, presupposes rationality. People work not by following their instinct as animals do, but by recognizing their needs, inventing a project that might meet their needs, and choosing the means adequate for the realization of the project.

(Baum, 1982: 11-12).

Consequently, children whether they have reached what is officially regarded as the age of reason or not have rationality. Exploitation of working children or neglect of justice to working children smacks off their dignity as human beings. When the conditions of work for working children lack social justice in any aspect, it questions the dignity and value of the child workers and the work they do. Any work done by

adults or children deserves a treatment that preserves the workers' dignity and the integrity of the work they do. All types of work whether in industry, farm, in the market, along the streets as well as in the family carries the mark of the human person even when done or carried out by children, whether paid or unpaid.

Biblically, a human being is called to subdue the earth and as an image of God to become a co-creator by transforming the universe. A human being as defined by labour needs the community for support to enhance self-actualization. Through labour human being is exposed to injustices and hence becomes vulnerable in some ways.

Based on the foregoing, working children contribute to the transformation of the universe in the work they do and are enriched by the same work. Working children are not exempted from injustices at the workplaces. Sometimes the injustices working children face in South East Nigeria are yet to be acknowledged. These injustices could be addressed through the proper ordering of human labour of which a theologico-legal resource from the analysis of children's rights and Catholic social teaching could be of relevance.

#### **7.4.3 Work has dignity**

Work, in general, has its dignity. Agricultural work has a specific dignity that relates to the dignity of the worker. According to John Paul II, it is in agriculture that "man so eloquently 'subdues' the earth he has received as a gift from God and affirms his 'dominion' in the visible world" (*LE*, 21). Work is to be seen as something good:

It is not only good in the sense that it is useful or something to enjoy; it is also good as being something worthy, that is to say, something that corresponds to man's dignity, that expresses this dignity and increases it. If one wishes to define more clearly the ethical meaning of work, it is this truth that one must particularly keep in mind.

(*LE*, 9).

This way of reasoning could be related to a statement in paragraph 35 of the *Gaudium et Spes*. Human work is firstly human and its goal is for the well-being of the human being who works. When human being works, he or she not only transforms nature and the society but also himself or herself. This transformation could be by learning and development of his or her faculties.

Children in South East Nigeria work in farms and agricultural settings. An understanding that agricultural work has specific dignity for every person ennoble the dignity of working children as workers. More so, the transformative effect of work is evident in the work children do, such as in apprenticeship work and other family work where work is seen as a learning process and an introduction into the society. The growth that results from work is more than the material achievement. In this sense, what one acquires materially through work is less important than what he or she becomes as a result of work. Children in apprenticeship are not only expected to achieve material wealth but also to mature integrally and be ready to face adult life.

So in spite of the toil that accompanies work, it is still a good thing for human beings. *LE* highlighting the ethical meaning of work maintains that although work “bears the mark of a *bonum arduum*, in the terminology of St Thomas, this does not take away the fact that, as such, it is a good thing for man” (*LE*, 9). It is true that



work is a heavy toil but it does not negate the fact that it is through work also that human beings truly exercises “dominion” over the earth. It is through work that the divine mandate is fulfilled thereby affording human being the opportunity to participate in co-creation through production. Work is good for human being and to humanity, because it is through work that “man not only transforms nature, adapting it to his own needs but also achieves his fulfilment as a human being and indeed, in a sense, becomes “more a human being” (*LE*, 9).

The researcher in applying this to the research context holds that working children, especially in South East Nigeria who suffer and toil for themselves or to support their families, in the wake of economic downturn and poverty would be encouraged to learn that work remains a good thing in the midst of hard toil. It will be more rewarding to note that children through the work they do in South East Nigeria and elsewhere are not dehumanized by the toil of human work but become more human. Toil does not negate the value of human work, including children’s work.

#### **7.4.4 Work as a virtue**

Work could be used as a tool to exploit human labour, that is, the worker. To avoid such exploitation, human labour should be connected as a virtue to the world of work and production. It is believed that this will help the worker become “more a human being”, thereby preserving the dignity and subjectivity of the human person (*LE*, 9).

In John Paul II's address<sup>50</sup> to workers at Monterrey, Mexico, on January 31, 1979, he insists that:

We would create a world unpleasant to live in if we aimed only at having more, and did not think first and foremost of the person of the worker, his conditions as a human being and a son of God who is called to an eternal vocation, if we did not think of helping him to be more.

(John Paul II's Address, 1979).

In order to protect the dignity of the human person, John Paul II re-asserts that a human being as a worker should never be seen as one of the means of production. In all circumstances of work, "whereby matter gains in nobility, man himself should not experience the lowering of his dignity" (*LE*, 9).

The researcher extrapolates that any work that does not add value to the life of working children falls short of social justice. To preserve the dignity of a human being as a worker, every human being should be the end of all activities and should never be used as a means to an end, including every child worker.

This informs John Paul II's call for solidarity to rise against economic exploitation as regards wages, working conditions, and the social security of workers:

Solidarity must be present whenever it is called for by the social degrading of the subject of work, by exploitation of the workers, and by the growing areas of poverty and even hunger. The Church is firmly committed to this cause, for she considers it her mission, her service, a proof of her fidelity to Christ, so that she can truly be the "Church of the poor". And the "poor" appear under various forms; they appear in various places and at various times; in

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<sup>50</sup> For further reading see John Paul II (1979) *Address to workers at Monterrey, Mexico on Jan. 31, 1979*. Available at: [http://w2.vatican.va/content/john-paul-ii/en/speeches/1979/january/documents/hf\\_jp-ii\\_spe\\_19790131\\_messico-monterrey-lavoratori.html](http://w2.vatican.va/content/john-paul-ii/en/speeches/1979/january/documents/hf_jp-ii_spe_19790131_messico-monterrey-lavoratori.html) (Accessed: 20/11/2018).

many cases they appear as a result of the violation of the dignity of human work.

(*LE*, 8).

The aim of solidarity is to protect and promote the dignity of the human person and human work. The rights of workers are violated in instances of unemployment, underrating the work performed by human person and ignoring the rights that flow from human work; such as, rights to social security of the worker and just wage. Solidarity insists that in the midst of the industrial revolution, the worker should remain the end of work. Solidarity gives voice to the rights of workers.

Consequently, working children should be encouraged to form solidarity through which their voices as workers could be heard. Solidarity for working children in South East Nigeria could be one of the avenues the rights of working children might be protected. The best interest of the child as promoted by the *CRC* of 1989 cannot be fully achieved unless working children are given a platform that enables their voices to be heard. This could be a great task due to cultural views on the status of children in Africa, including Nigeria. In such cultural contexts, children are to be seen but not heard, a solidarity that makes their voices heard would be a breakthrough in attending to the need to preserve social justice for working children.

#### **7.4.5 Dignity of disabled persons**

*LE* gave some attention to the special needs of disabled persons. Disabled persons are “fully human subjects with corresponding innate, sacred and inviolable rights” like any other human person” (*LE*, 22). The bodily defects are never to be taken as having affected their rights and dignity as persons. They have the right to contribute

in their own measure to the growth of the society. They should be incorporated to work in the society as this brings to light that the dignity of human being does not depend on what is produced but on the dignity of the human person that carries out the task. *LE* demands that:

The disabled person is one of us and participates fully in the same humanity that we possess. It would be radically unworthy of man and a denial of our common humanity to admit to the life of the community, and thus admit to work, only those who are fully functional. To do so would be to practice a serious form of discrimination, that of the strong and healthy against the weak and the sick.

(*LE*, 22).

Employers of labour at all levels should not discriminate in offering jobs to disabled persons. “Work in the objective sense should be subordinated in this circumstance too to the dignity of man, to the subject of work and not to economic advantage” (*LE*, 22).

It is more painful to see disabled working children engage in exploitative child labour that deprives them of social justice and their human dignity, such as scavenging and street begging. Unemployment of adult workers is common in South East Nigeria and this forces children to work, including disabled children. Disabled children work more in the informal sector and this spells out reasons other channels of preserving the rights of disabled working children should be explored. *LE* insists that “it is hoped that a correct concept of labour in the subjective sense will produce a situation which will make it possible for disabled people to feel that they are not cut off from the working world or dependent on society” (*LE*, 22). A subjective sense of labour in relation to disabled working children will be an advantage in upholding their human dignity and preserving their rights as workers. Acknowledging that work

has meaning because a human being carries it out, including disabled working children would preserve the value of the work they do and uphold the dignity of disabled working children.

## **7.5 The primacy of labour over capital**

### **7.5.1 Origin of conflict**

John Paul II continues to explore the disagreement between labour and capital already started in 1891 *Rerum Novarum* of Leo XIII. The conflict between labour and capital is specially treated in the third part of the encyclical. *LE* reminds us that:

the issue of work has been posed on the basis of the great conflict that in the age of and together with the industrial development emerged between “capital” and “labour,” that is to say between the small but highly influential group of entrepreneurs, owners or holders of the means of production, and the broader multitude of people who lacked these means and who shared in the process of production solely by their labour.

(*LE*, 11).

*LE* notes that the “opposition between labour and capital does not spring from the structure of the production process or from the structure of the economic process” (*LE*, 13). *LE* claims that the conflict originates from the fact that workers put their power in the hands of entrepreneurs. In order to maximize their profit, owners of means of production pay their workers the lowest possible salaries, and neglect the issues of safety, health and living conditions of the workers and their families. These and some “other elements of exploitation” become a significant reality in defining the conflict between labour and capital (*LE*, 11). The historical background of *LE* seems to be symbolized by the publication of *Rerum Novarum* (*LE*, 11). Leo XIII in *Rerum Novarum* reveals that:

The elements of the conflict now raging is unmistakable, in the vast expansion of industrialists and the marvellous discoveries of science; in the

changed relationships between masters and workmen; in the enormous fortunes of some few individuals, and the utter poverty of the masses; the increased self reliance and close mutual combination of the working classes; as also, finally, in the prevailing moral degeneracy.

(*RN*, 1).

*LE* assumes that the historical details of the conflict between labour and capital are well known and so did not give much attention to it. *LE* presumes that there is “vast literature on the subject and by experience” (*LE*, 11). *LE* directs that it is better to leave historical issues of the conflict between labour and capital and “go back to the fundamental issue of human work, which is the main subject” and “constitutes one of the fundamental dimensions of his earthly existence and of his vocation” (*LE*, 11).

The researcher suggests that the conflict between labour and capital could be adapted to the working conditions of children in South East Nigeria, although the contexts differ. The conflict between labour and capital as *LE* examines takes up a different meaning in the context considered in this research. Children work for entrepreneurs and owners of the means of production but there are not much-industrialized firms as in the developed countries. The desire to make more profit to the detriment of working children results not only from the owners of the means of production but also from the children as well as family pressures. Some working children are engaged by their families and some even work for themselves. The need to preserve the dignity of working children is not only to protect them from exploitative employers but also from themselves, since some of them are self-employed. It is important to guide working children so that engaging in any type of work does not militate against other rights specifically meant for them as children. Children involved in street trading expose themselves to all sorts of danger. Capitalism used in

relation to working children should also be seen from the viewpoint of any act downgrading the human dignity due to unguarded quest for financial benefit and exposure to dehumanizing conditions of work. As such, capitalism should be evident at any place where interest in profit overshadows the rights and dignity of working children. Through this manner of understanding capitalism, both the owners of the means of production and the working children are checked from indulging in actions that demean the dignity of the human being as a worker. In this way, the dignity and rights of working children are preserved and upheld against conditions of work that dehumanize them as workers.

#### **7.5.2 Errors of economism and materialism**

The primacy of the person as the worker over capital was “broken up in human thought, sometimes after a long period of incubation in practical living” (*LE*, 13). *LE* identifies two connected errors in which “labour was separated from capital and set in opposition to it, and capital was set in opposition to labour, as though they were two interpersonal forces” namely; “an error of economism” and the “error of materialism” (*LE*, 13). The error of economism considers human labour in terms of its economic relevance while the error of materialism “directly or indirectly includes a conviction of the primacy and superiority of the material, and directly or indirectly places the spiritual and the personal (man’s activity, moral values and such matters) in a position of subordination to material reality” (*LE*, 13). If the errors of economism and materialism are to be rejected, society needs to get a sound teaching of the relationship that should exist between the human being and economic and material benefits.

Particularly, it could be said that these errors of economism and materialism exist in families and the wider society in South East Nigeria. This is due to the culture of expecting children to contribute to the sustenance of the family and look after the elderly. As a result, some families value their children based on their economic relevance and the material things they can provide them. No wonder children engage in bonded labour and apprenticeship that sometimes seem to emphasize economic and material gains with less emphasis on making the working children become more human.

*LE* explores the systems based on these errors of economism and materialism namely, liberalism and Marxist socialism. Liberalism and Marxist socialism are faced with similar criticisms as with economism and materialism. *LE* points out the weaknesses of such a structural framework (*LE*, 7,8,11,14). For instance, *LE* differs in its understanding of class conflict. Marxism sees the confrontation of workers with the capitalist class as based on forces beyond personal option, on historical necessity. On the other hand, *LE*'s interpretation of class conflict is based on the realization of injustice at the workplace and it is the need to change the situation for better that should necessitate the formation of the solidarity. *LE* insists that separating labour and capital presents an incomplete picture of the process of production. *LE* encourages all to embrace an economic system with a Christian view that respects human being as an image of God.

The researcher argues further that human being, including children, therefore, is behind both labour and capital and the only solution for this conflict is "through



adequate changes both in theory and in practice, changes in line with the conviction of the primacy of the person over things and of human labour over capital as a whole collection of means of production” (*LE*, 13). An understanding of the primacy of working children over the means of production and capital would preserve their dignity and rights. The family and society should eschew all forms of errors of economism and materialism if the dignity of working children is to be promoted and preserved.

### **7.5.3 Humans at the base of capital and all process of production**

The concept of capital includes more than natural resources made available through human work and the means of production since they are also produced by human labour. *LE* argues that:

Since the concept of capital includes not only the natural resources placed at man’s disposal but also the whole collection of means by which man appropriates natural resources and transforms them in accordance with his needs (and thus in a sense humanizes them), it must immediately be noted that all these means are the result of the historical heritage of human labour.  
(*LE*, 12).

Human beings have through their work over the centuries developed the means of production from the simple instruments to the more complex ultra-modern ones such as computers, machines, laboratories and factories. As such, “everything that is at the service of work, everything that in the present state of technology constitutes its ever more highly perfected ‘instrument,’ is the result of work” (*LE*, 12).

Although, the cause of injustice to working children may not be totally linked to improved science and technology as in the case of developed countries, yet working

children make use of some sort of the means of production. It should be noted that no matter how unrefined or crude those means of production are, they are all a product of human labour. Working children still rank higher in value to the means of production and capital.

Furthermore, the question of the primacy of labour over capital is taken for granted; since it is human being's labour, energy, intellect and efforts that are at the base of all means of production and capital. Hence, *LE* explains that "at the beginning of man's work is the mystery of God's creation" (*LE*, 12), the reality of the priority of labour over capital is evident owing to the fact that capital will not exist without human labour. As such, in labour, the human being connects to the inheritance from nature given by God and the inheritance from other people's labour (*LE*, 13).

The human being as the worker is a person independent of the whole process of production and the work he does. The primacy of a human being over things and the whole production process "is part of the abiding heritage of the church's teaching" (*LE*, 12). *LE* insists that this should always be emphasized with reference to the whole of the socio-economic system, including the labour system. At the same time, the whole collection of the means of production and the whole collection of instruments "no matter how perfect they may be in themselves, are only a mere instrument subordinate to human labour" (*LE*, 12).

The researcher argues that whether children are using a wheel-barrow to sell goods along the streets or using a hoe and spade to till the ground in the farm, procurement and maintenance of these means of production are of secondary value to the human

dignity of working children, a dignity which accords them workers' rights. This teaching must be made known and popular especially at the grassroots levels so that it might influence the mental categories and concepts of the society to forestall engaging children in works that are unsafe and exploitative, especially in South East Nigeria. Even as the means of production improves in South East Nigeria, *LE* would seem to protect working children from any form of exploitation that relegates them to a secondary position to the means of production and capital.

#### **7.5.4 Human being as the real efficient subject**

The reality of the priority of labour over capital is not limited to only a few types of work but to all. Human beings are the real efficient subjects in the world of work and production while capital is the material cause. Human beings remain prominent as the subject of work in the production process. This is clearly stated in *LE*:

Obviously, it remains clear that every human being sharing in the production process, even if he or she is only doing the kind of work for which no special training or qualifications are required, is the real efficient subject in this production process, while the whole collection of instruments, no matter how perfect they may be in themselves, are only a mere instrument subordinate to human labour.

(*LE*, 12).

The researcher holds that the work children do in developing countries, including South East Nigeria could belong to the category of works that do not require qualifications or training yet they qualify as work. For example, raw materials in a palm oil mill remain raw material if working children do not engage with them. Palm leaves will remain raw materials until working children as the real efficient subject transforms them into baskets and brooms. These materials, as well as the instruments

that assist children in the process of production, are still subordinate to their labour. Working children remain the real primary and efficient subject in the work they do since the instruments and raw materials can never become finished products without the assistance of working children.

The Catholic Church has always taught and upheld the principle of the priority of labour over capital. Capital should always be at the service of labour. *LE* insists that “we must emphasize and give prominence to the primacy of man in the production process, the primacy of man over things” (*LE*, 12). The primacy of human being is true even in circumstances in which workers are treated as objects, their human subjectivity, made in the image of God is still able to criticize these unjust working conditions, organize themselves into a group and struggle to enthrone just economic working conditions.

Evidently, the presentation of human being as the real efficient subject in the process of production sets out working children as subjects of rights as workers. Human rights are given to human beings and not to material things. As real efficient subject of the means of production, children as workers are human beings and so are subjects of rights. An understanding of children as real efficient subjects of the means of production, and consequently subjects of rights is an advantage in preserving the rights of working children.

### **7.5.5 Ownership of capital and the means of production**

The conflict between capital and labour is connected with the ownership of the means of production and natural resources. The Catholic Church upholds the private ownership of property and the means of production but not as “absolute and untouchable” (*LE*, 14). This is owing to the fact that the right to private ownership of property and means of production is placed in a wider context of the right to common use of the goods of the whole of God’s creation. It means that the right to private ownership is placed subordinate to the right to common use. It is understood that the goods of the whole of creation are meant for the use of all. *LE* insists that capital:

cannot be possessed against labour, they cannot even be possessed for possession’s sake, because the only legitimate title to their possession - whether in the form of private ownership or in the form of public or collective ownership - is that they should serve labour, and thus, by serving labour, that they should make possible the achievement of the first principle of this order, namely, the universal destination of goods and the right to common use of them.

(*LE*, 14).

In relation to working children, the researcher suggests that the proper designation of goods as meant for the use of all and not to be possessed just for possession sake is a good reminder in areas where some children labour under rich entrepreneurs who are insensitive to their needs. An understanding of ownership of the means of production seen as serving working children and children having priority rights over the personal or collective ownership of the means of production would be of benefit to preserving the dignity and rights of working children in South East Nigeria.

Furthermore, *LE* realizes that there may be a need for adaptation in the proposals for joint ownership of the means of production especially in Africa and other developing countries of the world. The understanding is that exploitation is not necessarily a problem arising from “ownership” but of “use”. The Catholic Church upholds private ownership provided it is put to common use (*LE*, 14). The social ownership of the means of production and resources has meaning only when workers could in most possible way be associated with the ownership of capital. The integration of a worker as part owner of the capital is realized when the worker realizes that he or she is working “for himself or herself”. “If this is not done, incalculable damage is inevitably done throughout the economic process, not only economic damage but first and foremost damage to man” (*LE*, 15).

The system of work where working children are seen not just as workers alone but also as co-owners of the capital would help to preserve the dignity of the working children and their rights as workers. In this way, working children would have been appreciated as human beings and holders of rights as workers.

#### **7.5.6 Labour and capital are inseparable**

Although capital which is the totality of the means of production through which a human being transforms natural resources according to his or her needs is subordinated to the human person, as the primary efficient cause of the production process, “capital cannot be separated from labour; in no way can labour be opposed to capital or capital to labour, and still less can the actual people behind these concepts be opposed to each other” (*LE*, 13). In 1931, Pius XI in his encyclical

*Quadragesimo Anno* (QA, 13) criticized ascribing the success that accrued from the combined roles of labour and capital to one and not the other. In 1961, John XXIII recalled this teaching of Pius XI in *Mater et Magistra* as follows:

We should recall here the principle enunciated by Pius XI in *Quadragesimo Anno*: 'It is entirely false to ascribe to the property alone or to the work alone whatever has been obtained through the combined efforts of both, and it is wholly unjust for either, denying the efficacy of the other, to arrogate to itself whatever has been produced.

(*Mater et Magistra*, 76).

Labour and capital should be seen as complementing each other or interdependent but never as independent realities. John Paul II in *LE* invites us to go deeper and beyond the boundaries of the opposition between labour and capital. In *LE*, the Pope is hopeful that:

A labour system can be right, in the sense of being in conformity with the very essence of the issue and in the sense of being intrinsically true and also morally legitimate, if in its very basis it overcomes the opposition between labour and capital through an effort at being shaped in accordance with the principle put forward above: the principle of the substantial and real priority of labour of the subjectivity of human labour and its effective participation in the whole production process, independent of the nature of the services provided by the worker.

(*LE*, 13).

The researcher suggests that working children and the work they do themselves are to be seen as jointly important. Owners of the means of production who employ children should indicate and acknowledge the contribution of working children in their enterprise. Neither working children nor the capital should be seen as less important in the process of production. The success that accrues from the process of production should neither be given to working children nor to the means of production alone but to both. This understanding preserves the union of the means of

production and working children in a manner that none is lost, as the continued existence of work and workers has more than economic relevance.

## **7.6 The right of workers**

The right of workers is the main discussion of the fourth section of *Laborem Exercens*. It states that work is a moral obligation as well as a source of human rights (*LE*, 16). *LE* defends the traditional rights of workers to just wage, employment and the right to form a worker's union in the context of human rights. The encyclical emphasizes the afore-mentioned rights for different categories of workers such as, to agricultural workers (21), disabled persons (22), and emigrants (23). Catholic social teaching holds that rights are based upon human dignity and "the root reason for human dignity lies in man's communion with God" (*Gaudium et Spes*, 19; see also *Dignitatis Humanae*, 2). The rights of workers are based on human dignity. Human rights express the particular moral demand that belongs to a human being as a being endowed with dignity, both at the individual and larger community levels. The section on workers' rights is to be comprehended "in the context of human rights properly understood, promoted and guaranteed in and through the existence of commonality and solidarity..." (Lamoureux (2004: 398). *LE* insists that "the human rights that flow from work are part of the broader context of those fundamental rights of the person" and so is not a new formulation (*LE*, 16).

Furthermore, work is a duty because God has commanded it, and secondly, it is through work that the necessities of human being, family and the society are



maintained and/or sustained. *LE* explains that a human being has a moral obligation to work:

out of regard for others, especially his own family, but also for the society he belongs, to the country of which he is a child and the whole human family of which he is a member, since he is the heir to the work of generations and at the same time a sharer in building the future of those who will come after him in the succession of history.

(*LE*, 16).

Since work demands human rights, children's work requires the protection of human rights. The recognition of work in *LE* as a basis to claim human rights opens up an avenue that safeguards the rights of working children. Justice to workers as presented in *LE* implicitly includes the right of working children. *LE* is an outstanding document of the Catholic social teaching because it provides the theological framework that could be applied in safeguarding the rights of working children. Children are called to work in their own terms different from adult workers. In this way, children enable their personal development and contribute to the progress of the society. So, the rights of children as workers need also to be protected. In the section that follows, the rights of workers to just wage, unions and the problem of unemployment will be explored in relation to working children. Before we delve into that, a cursory look at the impact of direct and indirect employers to the world of production will be examined.

### **7.6.1 Direct and indirect employers**

To properly situate the right of workers, *LE* differentiated *direct employers* and other *indirect employers*. *LE* explains that:

the *direct employer* is the person or institution with whom the worker enters

directly into a work contract in accordance with definite conditions, we must understand as the *indirect employer* many different factors, other than the direct employer, that exercise a determining influence on the shaping both of the work contract and, consequently, of just or unjust relationships in the field of human labour.

(*LE*, 16).

Workers have a right to engage in a contract with the direct employer depending on the available work and the workers' skills.

It has been suggested that “the concept of the indirect employer is one of the most distinctive and effective element in the encyclical. It refers to many different elements that influence employment and conditions of employment” (Lamoureux, 2004: 399). The first among *indirect employers* is the State who must see to the implementation of justice for workers. Other indirect employers who could influence the condition of employment and wages of the workers include banks, multi-international bodies, the church and the like. In a global world of today, international collaboration has a remarkable impact on the world economy and thereby affects the overall planning of the conditions of workers (*LE*, 18). The economic situation of the developing nations seems not to be taken into consideration.

Furthermore, the concept of indirect employer seems to add value to the employment system. Lamoureux (2004) avers that the concept of indirect employer:

reminds us that the responsibility for the disadvantaged and the marginalized in society does not lie solely with the federal or state governments. Along with the state, businesses, managers, and other social forces have a duty to create conditions in which individuals can realize their right as well as their duty to work.

(Lamoureux, 2004: 399).

The researcher argues that working children need support while negotiating for the conditions of work to ensure that their rights as workers are preserved. The Catholic Church as an indirect employer could make a positive impact in preserving the dignity and rights of working children in an area where the inhabitants of the area are predominantly Catholics. The idea of an indirect employer seems favourable to the theological analysis of the rights of working children using Catholic social teaching because it offers a contextualized response to child labour in South East Nigeria. Traditionally, the community, whether ecclesial or civil, is a stakeholder in the training and upbringing of children in South East Nigeria. The community and the Church could become a mouthpiece in the fight against structures that promote unsafe labour conditions for children and equally prevent labour employers from exploiting children's vulnerability.

Nevertheless, it is argued that the concept of "indirect employer" as a significant factor in the dynamics of employment seems to weaken the argument for the rights of workers. The state and every society were mentioned as indirect employers. This manner of thinking seems to breed confusion about what it is meant to achieve (Stanmeyer, 1981). However plausible this argument may seem, it does not undermine the relevance of indirect employers, such as the Catholic Church in providing a theologico-legal resource for the preservation of the rights of working children. This theologico-legal resource envisages a legal framework that draws from *LE's* prescript on work and applies it to the role that children play in the world of work and production, be it in the family, Church or State. Its adoption will protect children often working in sectors of the economy away from the sight of government enforcement agencies. Utilizing the indirect employer's model by the Catholic

Church and her agencies within an area with a great number of Catholics would assist in preserving the human dignity of working children.

### **7.6.2 The problem of unemployment and workers' rights**

The right of workers is greatly hindered by unemployment. Work creates for human beings the opportunity for self-realization which unemployment deprives them. Unemployment is the inability of those who can work and are willing to work to secure a job. Unemployment could exist in certain sectors of the economy or all. *LE* explains that:

The role of the agents included under the title of indirect employer is to act against unemployment, which in all cases is an evil, and which, when it reaches a certain level, can become a real social disaster. It is particularly painful when it especially affects young people.

(*LE*, 18).

*LE* argues that it is the duty of the government to provide “unemployment benefits” for the sustenance of the unemployed and their families. The obligation to provide unemployment benefits is based on the “fundamental principle of the moral order” namely, the right to life and sustenance. For truly so, human work is considered “a fundamental right of all human beings” (*LE*, 18). However, economic rights are different from civil rights, and so, do not have the same level of enforcement in all countries.

The researcher argues that in a country like Nigeria where the welfare of employed workers is not met as agreed by the government, and workers are owed salaries for many months due to systemic failures, one wonders how unemployment benefits

could be met. In fact, lack of employment for adult workers in Nigeria encourages child labour as children are forced to support their families. Nevertheless, it has been suggested that the view that unemployment “in all cases is an evil” requires further elaboration for it appears overstated because it does not reflect the different situations of the world economy, especially among developing economies like Nigeria. There is the issue of seasonal unemployment in some countries, which is also a burden on the shoulders of entrepreneurs (Stanmeyer, 1981).

*LE* appeals to all indirect employers to ensure that the full provisions of the right to work are secured and implemented. Unemployment does not only affect the individual but also the family and more so deprives a human being of the opportunity to participate in the work of creation. As such, all people have some share of moral responsibility towards ensuring the well being of workers.

Unemployment as applied to adult workers is not applicable to working children. This is because children are workers not in the same sense that adults are workers. The work children do are more in the informal sector and of which some are unpaid jobs. Children cannot strictly speaking be unemployed as they always have some work to do. *LE*'s definition of work cuts across physical and intellectual spheres as well as paid and unpaid jobs. Even when the work available may not yield financial benefits, it will add value to their life and help them become more human. In this line of thought, the researcher suggests that when children engage in work within defined just conditions of work that uphold their best interests and rights, it helps in their integral development and ultimately, in becoming more human. Therefore,

envisaging unemployment for children is difficult, as they remain workers in their own terms as distinctive from adult workers.

### **7.6.3 Just wage and social benefits**

A just wage is an inalienable right of human being as a worker. Where the means of production is by private ownership or has been socialized to some degree, wages are the established way through which entrepreneurs pay their workers. As such, “in every case, a just wage is the concrete means of verifying the justice of the whole socioeconomic system”(LE, 19). Wages are not the only means of establishing a just relationship between workers and the owners of the means of production. Certainly, it is an essential key in estimating and establishing that a just relationship exists between workers and the owners of the means of production (LE, 19). In a specific term, LE argues for “family wage” for workers. This is a wage earned by the head of the family and is expected to meet the needs of the family without requiring the other partner to take up another job outside the home. It could also be in the form of grants or social welfare services that enable the mother to be fully dedicated to family matters. This approach encourages mothers to keep to their roles in the family and avoid taking up employable jobs to the detriment of their specific roles in the family (LE, 19). For instance, the care and education of children are considered a primary role of mothers. Mothers should never give up this role in search of a paid job since it is the “primary goals of the mission of a mother” (LE, 19). Mothers irrespective of culture and status take up jobs based on the demands of society, family needs and other reasons. LE’s assertion should be understood as a highlight on the need to uphold the primacy of parental care over economic needs of the family and trending

worldviews. *LE*'s discouragement to mothers from taking up jobs is only when it becomes a disadvantage to responsible parenthood. This does not mean that mothers are not to work outside the household context in all situations.

However, it does seem John Paul II in *LE* presumed the contributions of his predecessors in relation to the right to just wage. Prior to *LE*, Leo XIII in his encyclical *Rerum Novarum* of 1891 emphasizes the need to give greater protection to the poor industrial workers since the rich already had many ways of protecting themselves. He insists that the minimum wage should be reasonable and would be determined by the economic situations at hand. He calls for flexibility and justice in determining wage so as to ensure that workers are not deprived of a just benefit from the fruit of their sweat and toil (*RN*, 16-17, 34).

Pope Pius XI in 1931 further explained Leo XIII's teaching on the right to just wages in his encyclical *Quadragesimo Anno* (70-74). He expressed concern for the situation of business in order to ensure that just wage does not militate against the well being of the business and its owner. He insists that social justice demands should be applied in ensuring that every adult worker receives social provisions if sufficient family wage were not feasible in the economic situation of the business or state. He argues further that just wage should be decided having the public economic welfare in mind. The common good of the people should be a guiding principle. It entails that just wage should also encourage creating more opportunities for employment to enable more people to have a means of income and maintenance (*QA*, 70-74).

In *Mater et Magistra*, John XXIII (1961) added some aspects to the right to a just wage. He stresses the need to observe the unchanging norms of equity and justice while acknowledging that some factors in particular instances such as quantity and quality of available resources and time can affect some cases. He highlights individual's contribution to the world economy and the common good of the people (*MM*, 68-72).

There are, however, other social benefits apart from wages from which the worker also benefits. Healthcare should be provided to workers at a subsidized rate or free of charge. Healthcare benefit should cover accidents at the workplace. More so, the right to rest is considered essential for workers, at least on Sundays of every week. Workers should also have the right to have longer periods of rest during the year or many shorter periods of vacation in a year. Another right of workers is the right to pension and to insurance so as to protect workers in situations of old age or accidents at the workplace. The workers also have the right to a good and safe working environment. Care should be taken to ensure that the working environment and the process of production should not be "harmful to workers' physical health or to their moral integrity" (*LE*, 19).

The researcher suggests that family wage may not apply to children but a just wage does apply to them. The claim to a just wage and some benefits could be related to working children but in a manner that is consistent with the country's economic status. Healthcare benefits, rest, vacation, safe working environment, insurance against accident at the workplace, just wage should be considered as parts of the rights of working children. A more contextualized and detailed response to the



neglect of the rights of working children is to be worked out to enable working children benefit from their status as right holders. The idea of pension would seem to apply to adults more but the idea of vacation allowance would be a good idea in encouraging children to value rest and leisure.

#### **7.6.4 Role of work unions and solidarity**

In some circumstances, just remuneration and safe working conditions of workers are not met. Catholic social teaching since *Rerum Novarum* has always supported the formation of workers' unions. Workers' union is meant to be a mouthpiece for a group of workers in the struggle for social justice. Paul VI in *Octogesima Adveniens* of 1971 (hereafter *OA*) acknowledges that labour union plays an "important role" for various categories of workers (*OA*, 14). *LE*, however, proves to proffer strong support for labour unions in Catholic social teaching. *LE* presents labour unions not just as legitimate or relevant but most importantly as "an indispensable element of social life" (*LE*, 20). The support of *LE* to labour union seems to be deeper by using the word "indispensable".

However, it is not clear if the formation of labour unions implicitly includes working children. The researcher suggests that in South East Nigeria where children struggle to be heard, developing a culture that allows working children's union could assist in assessing the best interests of working children. Workers, including working children, should be encouraged to form unions provided their struggle protects common good and solidarity of all workers. Details of solidarity for working children will be discussed further in chapter 8.

The right of labour unions or association as propagated by the Catholic Church is based on the teaching that:

people have natural right to participate in the decisions affecting their lives and a right to free association. The right of workers to form unions or other associations to secure their rights is a specific application of the more general right of association. The right to organize is based in the personal and necessary character of work and also in human sociality.

(Lamoureux, 2004: 402).

This means that no government has the right to stop workers from forming a union to protect their rightful interest. *LE* supports workers to form a union to struggle for their rights whenever they are exploited or their human dignity damaged. The class struggle, which has been supported by the Catholic Church, is not necessarily a struggle “against” others but a struggle “for the goods that correspond to the needs and merits of working people associated by profession” (*LE*, 20).

Hence, the researcher proposes that children should be engaged in the struggle to protect their rights as workers. The Catholic Church through its agencies should aim at actualizing the formation of workers’ union for children. The struggle by workers’ union is a struggle that arose out of the consciousness that workers were oppressed and that individual effort is not sufficient to get the desired result. In South East Nigeria, when children as workers feel oppressed at their workplaces, they do not have a platform through which they can be heard as a group. It may be difficult to put such a structure in place but it is not an impossible task.

For a deeper understanding, the call for solidarity in Catholic social teaching is based on the reality of injustice against workers, which surely needs to be addressed (*LE*, 8). Baum (1982) explains further:

Labour solidarity is not the work of necessity, but the result of consciousness, freedom and personal choice... “Class consciousness” then is not the necessary result created by the contradictions in the economic infrastructure, nor is it confined to the class of industrial labourers; instead “class consciousness” is a rational reaction to the objective conditions of oppression, generated by free persons who recognize their situation and opt for solidarity as the only way out of their common predicament.

(Baum, 1982:29-30).

Union activity is not to be turned into a political struggle for power. Political involvement is restricted to those matters necessary for the union to achieve its goals. Unions should not “play politics” as they “do not have the character of political parties” (*LE*, 20). Hence, *LE* explains; “the struggle should be seen as a normal endeavour ‘for’ the just good: in the present case, for the good which corresponds to the needs and merits of working people associated by profession; but it is not a struggle ‘against’ others” (*LE*, 20). When unions operate like political parties, they fall short of achieving their aims and fail to monitor their internal activities, especially when their interests become politically diverse. A union can become so irrelevant and powerless when it aligns itself with a particular political party that may later not be in power.

Unions where they exist should not be oblivious of the socio-economic situations and other limitations in a country so as to ensure that demands are justified. A strike should always be used as a last resort, “extreme means” of seeking for social justice. This is to ensure that the common good is not compromised. Strike as the Catholic social teaching teaches is “legitimate in the proper conditions and within just limits” (*LE*, 20). Since workers have right to embark on strike, they should not be subjected to sanctions of any sort for taking part in a strike action.

Interestingly, union acts as a means of education. *LE* suggests that “the activity of union organizations opens up many possibilities in this respect, including their efforts to instruct and educate the workers and to foster their self education” (*LE*, 20). This adds to the value of unions as agents that help workers “not only to have more but above all be more: in other words that they will realize their humanity more fully in every respect” (*LE*, 20). There is an instance in the Catholic social teaching to see the union as an avenue to educate and lead people to unity and community. Sometimes playing this uniting role may not be easy. Obviously, division and confrontation are unavoidable in some instances in the human society. *LE*, therefore, advocates for a struggle that would not involve confrontation, friction, division, but a struggle that brings about social change through nonviolent means.

### **7.7 Towards a spirituality of work**

The encyclical ends with what John Paul II calls a “spirituality of work in a Christian sense” (*LE*, 24). He insists that “work in its subjective sense is always a personal action, an *actus personae*, it follows that the whole person, body and spirit, participates in it” (*LE*, 24). Before he articulated *LE*, John Paul II in his homily asserts that:

Christianity and the Church have no fear of the world of work. They have no fear of the system based on work. The Pope has no fear of men of work. They have always been particularly close to him. He has come from their midst. He has come from the quarries of Zakrzówek, from the Solvay furnaces in Borek Falecki, and then from Nowa Huta. Through all these surroundings, through his own experience of work, I make bold to say that the Pope *learned the Gospel anew*. He noticed and became convinced that the problems being raised today about human labour are deeply engraved in the Gospel, that they cannot be fully solved without the Gospel.<sup>51</sup>

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<sup>51</sup> John Paul II delivered this as a homily on his Apostolic pilgrimage to Poland his homeland. It was delivered on the 9<sup>th</sup> of June 1979 at the Shrine of Holy Cross in

Along the same line, John Paul II even before he articulated *LE*, firmly holds that work “does not only develop potentialities inherent in the universe, but it exalts and magnifies man himself, by making him more mature spiritually, more like God, since through his work he participates in the divine mission to radiate and instil kindness into human beings” (*RH*, 15). The spiritualization of work by John Paul II in *RH* is later developed in *LE*. This manner of looking at work as having a spiritual value ennobles working children and the work they do. With this sort of thinking and many other ways, the pope magnifies the worker and prepares the ground for the articulation of *LE*.

### **7.7.1 Work involves the whole person**

*LE* holds that the subjective dimension of work is connected to a human being as a person. As a personal action, intellectual or manual work involves the whole person, body, soul and spirit. It is to the same whole person that the message of salvation is directed. The work of the individual person should be given the profound meaning that work has “in the eyes of God and by means of which work enters into the salvation process” (*LE*, 24). The Catholic Church has a duty to reveal the moral and human value of work in order to form a “spirituality of work” that will help people have a deeper union and “friendship with Christ” as they share in Christ’s salvific work “by accepting through faith, a living participation in his threefold mission as priest, prophet and king” (*LE*, 24). This means that the Church sees spiritual life as

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Mogila. For the whole homily, see: [http://w2.vatican.va/content/john-paul-ii/en/homilies/1979/documents/hf\\_jp-ii\\_hom\\_19790609\\_polonia-mogila-nowa-huta.html](http://w2.vatican.va/content/john-paul-ii/en/homilies/1979/documents/hf_jp-ii_hom_19790609_polonia-mogila-nowa-huta.html) (Accessed 17/09/17).

not limited to only a life of prayer, contemplation, worship and praise but includes work.

In so far as there was no explicit exemption of children's work in *LE*, the researcher argues that the spiritual dimension of work also ennobles children's work.

### **7.7.2 Human beings share in God's creative work through work**

The spirituality of work is connected to the reality of God the Creator and Worker, who has called us to participate in his divine act through human work. A human being as created in the "image of God" shares in the creative work of God through work. *LE* states that human being:

shares by his work in the activity of the Creator and that, within the limits of his own human capabilities, man in a sense continues to develop that activity, and perfects it as he advances further and further in the discovery of the resources and values contained in the whole of creation.

(*LE*, 25).

Human being is called to work "from the beginning" and work is a "fundamental dimension of man's existence on earth" (*LE*, 4).

As people share in God's creative activity, they also share in God's rest. In the Book of Genesis, God worked for six days and rested on the seventh day. Work and rest are therefore tied together. Human being should not only imitate God in working but also in resting. God goes on working in order to sustain existence for those he prepares for rest with himself (see John 14: 2). Periodic rest and leisure remain essential so that human being may not be bound up in work and neglect to praise and

worship the God of work. Rest is also very important so that human being may have time to “prepare himself, by becoming more and more what in the will of God he ought to be, for the ‘rest’ that the Lord reserves for his servants and friends” (*LE*, 25).

Children as human beings are created in the image of God. It follows that they are part of the world of work and participate in the divine creative act through their work. In addition, rest from work is a human right with a divine origin and should be accorded to children as well in order to help them regain their strength, remain healthy and have time to worship God. An understanding of the divine origin of a right to rest by human beings, including children would be of relevance in checking exploitative engagement of children to work on days and hours they are entitled to rest.

### **7.7.3 Work sanctifies human beings**

In the Book of Genesis is contained the first “gospel of work” (*LE*, 26). Human being not only shares in God’s activity through work but is also sanctified by it. The sanctification of a human being goes beyond the work he or she does to even the daily activities. The spirituality of work has profound meaning in the life and work of Jesus Christ himself. He did manual work for the greatest part of his life on earth as a carpenter. Jesus appreciates and values human work. Jesus belonged to the world of work. *LE* reveals:

For Jesus not only proclaimed but first and foremost fulfilled by his deeds the “gospel,” the word of eternal wisdom that had been entrusted to him. Therefore, this was also “the gospel of work,” because he who proclaimed it was himself a man of work, a craftsman like Joseph of Nazareth.

(LE, 26).

The Old Testament made references to work as professions such as, the doctor (*Sir.* 38:1-3) and blacksmith (*Gen.* 4: 22). In many of his parables in the Bible, Jesus uses imageries that refer to God as a worker; such as, his reference to God as the vinedresser (*John* 15:1). Jesus uses some imagery that refer to human work in his parables of the kingdom of God such as, the shepherd (*Jn* 10:1-16), the farmer (*Mk* 12:1-12), and the fisherman (*Mk* 13:47 -50).

Jesus loves work and worked as well. In doing so he sanctified human toils. Paul, a tentmaker and a missionary “boasts” of his toil and labour” (*LE*, 26; see also *2 Thes.* 3:8). The “sweat and toil” of human work is a good thing. In the expression of Thomas Aquinas, despite the toil aspect of work, work is “*bonum arduum*”, it is a human good and virtue (*LE*, 9). The relevance of human toil is beyond its pains. *LE* refers to the teaching of the *Gaudium et Spes* which reveals that:

Human activity, to be sure, takes its significance from its relationship to man. Just as it proceeds from man, so it is ordered toward man. For when a man works he not only alters things and society, he develops himself as well. He learns much, he cultivates his resources, he goes outside of himself and beyond himself. Rightly understood this kind of growth is of greater value than any external riches which can be garnered. A man is more precious for what he is than what he has.

(*GS*, 35).

Consequently, the researcher argues that children may not be associated with higher skilled work but any work they carry out even their daily activities have spiritual value. Children in South East Nigeria engage in many manual works. To learn that manual work is an avenue of sanctification ennoble the contributions of children to the world of work. More so, adults, as well as children, are to be encouraged in the



toils and difficulties of human labour, as the relevance of human labour surpasses the pains of work itself.

#### **7.7.4 Work and the mystery of salvation**

Jesus took work to the highest level in the work of his passion, death and resurrection. Earlier, John Paul II in his homily on June 9, 1979 at the Shrine of the Holy Cross in Poland insisted on the undeniable connection between work and the mystery of salvation. According to him:

The law of Cross is engraved on man's work. It was with the sweat of his brow that the farmer worked. It is with the sweat of his brow that the ironworker works. It is with the sweat of his brow – the terrible sweat of death – that Christ agonizes on the Cross. The Cross cannot be separated from man's work. Christ cannot be separated from man's work.

John Paul II's homily (1979).

In *LE*, the spirituality of work is at its highest level at the discovery that in human work we collaborate also in the redemptive work of Christ; His Passion, Death and Resurrection. A human being in carrying out his or her daily activities shows himself or herself a true disciple of Christ. *LE* asserts that:

The Christian finds in human work a small part of the Cross of Christ and accepts it in the same spirit of redemption in which Christ accepted his Cross for us. In work, thanks to the light that penetrates us from the Resurrection of Christ, we always find a glimmer of new life, of the new good, as if it is an announcement of "the new heavens and the new earth" in which man and the world participate precisely through the toil that goes with work.

(*LE*, 27).

St. Paul in his epistles speaks of the relevance of workers and urges believers never to avoid work. He was proud that he worked and even earned his living through work. He appreciates and promotes the morality and spirituality of human work as expressed in the life and teachings of Jesus Christ. Notably, he encouraged people to

carry out their duties as a way of serving the Lord not human beings, hoping also that God will reward them (*LE*, 26; Col. 3: 23-24).

The researcher claims that from a theological perspective, every human work whether performed by adults or children, is in a mysterious way joined to the salvific work of Christ. Children as well should be encouraged in the work they do as it has an inestimable value as it is joined to the work of redemption.

### **7.8 Concluding remarks**

From the foregoing, it is evident that *LE* has given a response to the problem of work in the world of production and capital, created by a new form of technology and world philosophies though without giving special attention to working children. The insight and contribution of *LE* in some manner is a continuation of Catholic social teaching in history. However, *LE* made specific contributions in some areas. *LE* bears a personalistic approach and upholds the centrality of the Gospel message in responding to the challenges that have been identified in the world of work and production. *LE* may not have given a sufficient attention to all the problems associated with human work and the production process, but the fundamental principle on which particular circumstances could be addressed is already laid out and could be applied to children in South East Nigeria. *LE* may not have considered all the socio-economic, technological, political and cultural backgrounds of all peoples but one could possibly adapt its teachings to some specific questions on human work, including the preservation of the dignity of working children. As already mentioned, the understanding of children as workers is to be separated from

the designation of adults as workers. Children are workers in their own terms, in a manner that ensures the preservation of specific rights due to them as children, such as the rights to education. The idea of the indirect employer opens up a new way of looking at the most neglected rights of working children. This chapter has explored how this new approach could be exploited in favour of working children by the society, including the Catholic Church and her agencies. Thus, *LE* is the most current Catholic social teaching on human work and as such could be regarded as a reference text.

Whereas *LE* does not explicitly refer to working children, this chapter has successfully argued that the rights of working children are not excluded either. This understanding forms the basis on which the next chapter proceeds to justify the research proposal as well as the significance of the thesis statement (theologio-legal resource) in addressing the problems of working children in South East Nigeria. The next chapter will also make some recommendations for further complementary research in the area of working children in South East Nigeria.

## **CHAPTER 8**

### **JUSTIFICATION OF THE THESIS, RECOMMENDATION AND CONCLUSION**

#### **8.1 Introduction**

The researcher has come to the end of his intellectual investigation. It is pertinent to recall that this research was carried out in the context of the pervasive child labour practices in South East Nigeria in order to provide a theologico-legal resource through the analysis of Catholic social teaching and human rights instruments for the preservation of the rights of working children. Exploitative child labour practices thrive as a result of the inadequacy of human rights legislation in protecting children from economic exploitation and degradation of their human dignity, especially in the informal sector of the economy. The agencies and resources put in place for the fight against exploitative child labour are not enough to efficiently ensure an exploitative-free child labour practices and preservation of the rights of working children, especially in rural areas in Nigeria. Indeed, the enforcement of child labour legislation is inefficient as the exploitation of working children in South East Nigeria also occurs in the informal sector, away from the immediate view of law enforcement agents.

In this final chapter, a recapitulation of the reasons for this research and how it has been carried out will be presented. It will be followed by recommendations based on the findings of the research. The recommendations are based on the goal of this research. In this way, the aim of this final chapter is the justification of the thesis proposal; how relevant the research is and to confirm that the expected goal is

achieved. This chapter recommends other areas of possible research that would add to the existing research in order to achieve greater success in the preservation of the rights of working children. It ends with a brief concluding remarks. Having recapped the research so far, the next section sets out to prove that the thesis proposal of the research is justified.

## **8.2 Justification of the Thesis Proposal**

This research sought to support the goal of child labour legislation by advancing a theologico-legal framework for a fuller realization of the rights of working children in South East Nigeria, an area predominantly made up of Catholics. Since Nigeria strictly speaking is not a secular State, laws that have religious resonance could likely command compliance. To achieve those objectives, it is pertinent that such laws should be couched in a language that is compatible with religious worldview. Hence, this thesis proposes a “theologico-legal resource.” It is believed that since there is a greater number of Catholic Christians in the South East Nigeria, a rights-based approach in the preservation of the rights of working children that has theological reference would be of benefit.

Although there seems to be a number of legal instruments that advocate for the preservation of the rights of working children, the contribution of the Catholic social teaching is insufficient. More so, owing to the need to promote justice to working children, the research sought to establish the contextual need for children’s rights legislation within a theological matrix. To achieve this goal, the research from the beginning sought to establish the extent to which Catholic social teaching could

enhance the realization of the rights of working children. Catholic social teaching has many documents of universal relevance that reflect on work and rights of adult workers. In some instances, children are specifically mentioned but in some others, work is discussed without an explicit indication that working children were included. The research also sought to establish the extent the Catholic social teaching could be employed in dissuading exploitative child labour in South East Nigeria. The research examined the extent to which Catholic social teaching could contribute to a positive image of working children. Catholic social teaching in exalting work and the worker invariably exalts the status of working children. Children may not have been explicitly mentioned in all the Catholic social teaching documents but it is the workers, whether children or adults that define the process of production. The research sought to establish the extent to which Catholic social teaching could encourage Catholic agencies in the protection of the rights of working children. In many ways, the research situated the rights of working children within the larger context of human rights that has its emergence from permissive natural law and natural rights tradition, a tradition that recognizes human being as created in the image of God, a tradition that commands acceptance of rights by Catholics. As Perry (2000) discovers in his studies, religious conviction is believed to enhance the acceptance of human rights.

Moreover, the research having investigated the available legal instruments for the fight against exploitative child labour concludes that the availability of legal instruments, for child labour, notwithstanding, support is required for a fuller realization of the rights of working children. There are some reasons for this such as, the lack of precision with regard to the different types of work and the proper age

that can engage in them. As such, the research calls for more clarity regarding the legal age allowed for engaging in certain types of work.

Nevertheless, the research identified that a socio-legal approach to the practice of exploitative child labour is insufficient. Although the social conception of children is affected by a variety of factors such as religious belief, culture, economic status, amongst others, the research recognizes that the *CRC* of 1989 did not give room to an African understanding of children as having both rights and responsibilities as evident in the *ACRWC* of 1990. The research observes that the *CRC* of 1989 does not take into consideration all the peculiarities of the developing economies and countries with different cultural contexts. It is understandable, however, that the *CRC* is at the prescriptive level and could not have fully captured all contexts as an international human rights instrument. The *CRC* itself aware of this calls on member states to adopt and domesticate the *CRC* in order to properly relate it to their particular contexts.

In addition, the research argued that history and context are major factors in the definition of permissible child labour and impermissible child labour in the Western world as elsewhere. The research observed that the formulation of the international treaties on the rights of children was based on a certain understanding of childhood, which are not exhaustive of the many existing contexts the world over. The *CRC* and some other international human rights treaties seem to have been largely influenced by the culture and contexts of the developed nations. More so, the legislation seems to have considered only working children within the industrial setting which is in contrast to Nigerian context, where most of the work done by children is within the

informal sector of the economy (Ibanga, 2007). *Ipsa facto*, developing nations should be supported to grow to the level where the universal legal instruments that protect the rights of the child will be more relevant.

Irrespective of the unique traditional conception of childhood in Africa, the research noted that the impact of colonization, globalization of ideas of childhood and corruption in many African countries amongst other factors contribute immensely to child poverty and child labour. The globalization of childhood leads to over-ambitious expectation on the efficiency of the *CRC*, without proper acknowledgement of different contexts of working children. As such, the reason children work in South East Nigeria can be downplayed thereby not acknowledging that economic, social and cultural rights have different enforcement pattern in relation to civil and political rights. However, due to incomplete transformation in social structures and social welfare system, this research argued that Nigeria like some other African countries is not yet able to support international human rights legislation based on work-free childhood.

Nonetheless, the research also argued that the approach to work and the type of work done by children in Nigeria seem to require a contextualized response. For example, in Nigeria, children work in various places such as in agricultural settings, street trading, domestic servants, child begging, apprenticeship, scavengers, bus conductors, child prostitution, child marriage and many other forms of child labour that are specific to the area. Some of these aspects of child labour are not universally practiced and as such would require a contextualized response.



Moreover, the research observed that the consequences of child labour are quite enormous. There is every need to devise an aid to the available child's rights legislation in relation to child labour in order to ensure that its adverse consequences do not befall working children. The research suggested that in a hostile environment such as, children who work on the streets, the sense of self-esteem and dignity could not be properly developed and preserved. The choices that such children seem to make are "predetermined by structural deprivations and pathologies of street life" (Schimmel, 2006:230). As such, the research discovered that a country trapped in the ills of exploitative child labour has sacrificed its young people, its future to be buried in the quagmire of stagnancy and cyclic poverty not only materially but also in integral development. Consequently, the problem of child labour cannot be solved without the involvement of all facets of the society including the Catholic Church.

Furthermore, it is true that the universal and regional human rights instruments have been domesticated but the implementation is inefficient because the Human Rights Monitoring Body at the domestic level is insufficient. Research observed that the agencies for the implementation of the legislation for the preservation of the rights of working children such as Federal Ministry of Labour and Productivity (MOLP), National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP), Nigerian Police Force (NPF), Nigerian Immigration Service, amongst others are not apt as well as insufficient for enforcing child labour legislation. Consequently, the Catholic Church in Nigeria has an important contribution to make as Nigeria improves its legislation and enforcement of child labour legislation. Christianity is deeply rooted in South East Nigeria and a more positive approach to

working children that would promote a safe environment and fight against unjust working conditions is important.

Research discovered that down through the history, whenever the Catholic Church talks about rights and uses rights language, it is always in the sense of rights drawn from natural law tradition, recognizing the common good, personal dignity, and individual persons as created in the image of God. More so, the Catholic Church following the long-established natural rights tradition even as she speaks in the language of rights has not embraced all the United Nations international human rights treaties.

Noteworthy, in exploring the relevance of Catholic social teaching to the theological analysis of the rights of working children, the research discovered that the urtext of Catholic social teaching, *Rerum Novarum* of 1891 was concerned about children working in unsafe environment and engaging in forced labour in industrialised contexts (*RN*, 42). Subsequent pre-Vatican II encyclicals gave a viewpoint approach to human work and insufficient attention to working children and the work they do. Vatican II and post-Vatican era did not give sufficient attention to working children. The research investigated how *LE*'s exploration of human work as a theological document that is based on the Bible could be an entry point for working children towards appreciating the great value of their work. The understanding of work to include manual and unpaid work in *LE* is a big advantage to appreciating the work that children do in South East Nigeria. In this research, the little or sparse connections made down through history regarding human work and working children

in Catholic social teaching has offered the needed foundation to developing a theologico-legal resource for working children.

### **8.3 Recommendations**

#### **8.3.1 A theologico-legal foundation for the rights of working children**

This research set out to provide a resource through an analysis of the rights of working children vis-à-vis Catholic social teaching. The importance of giving a theological footing to the rights of working children is borne out of the need to increase the contextual relevance of the child's rights instruments for the preservation of the rights of working children in South East Nigeria. It is believed that such a resource will present the rights of working children in more familiar terms by engaging the theological frameworks of Catholic social teaching. Consequently, this research recommends that the needed resource should have a theological and a legal foundation. It is theological because it is based on the principles and values of the Catholic social teaching. It is legal because it is founded on the universal, regional and national legal instruments meant for the preservation of the rights of working children and geared towards the fight against exploitative child labour and establishment of a good practice of child labour in South East Nigeria.

Theologically, based on the contextual relevance of the Catholic social teaching to protect the rights of working children, the rights of working children should be understood as first coming from the worker. That the right of the child worker comes from the child as a human being and a worker does not negate a child being a child.

A child is a worker in a manner and understanding that is different from an adult being a worker. In the *Preface* of *LE*, children's and adults' "manual or intellectual" activities are regarded as work precisely because they are carried out by human beings capable of reasoning, persons who are able to do things in an organized manner, take decisions and have the capability of self realization. Children also have rights specific to them as children of which the right to work is defined within the limits allowed by children's other rights such as, the right to education. Every worker, including the working child, is created in the image of God and so naturally possesses the dignity of the child of God. It is on human dignity that rights are based. According to *LE*, work is seen as a command given by God to human beings alone, so work defines the human person as different from other animals. Work has an intrinsic value. Human beings participate in divine act through work (*LE*, 4). The dignity of work is to be located in the human being, the worker who carries out the work (*LE*, 6). Work does not only demand rights it is also seen as a "natural right" (*LE*, 10). It is through work that life is sustained. In order to protect work as an activity through which livelihood is preserved, workers are to be considered as the possessors of rights. In keeping with the Church's tradition, *LE* argues for the priority of labour over capital. It condemns the errors of economism and materialism: in this way the human being, the worker ought to be protected in order to preserve the necessary elements of the means of production. Work should make the human being become more human and even more spiritual. The concept of an indirect employer in the process of work and production gives the Catholic Church the right to make contributions towards the preservation of the rights of working children.

On the other hand, there are several formulations of the rights of working children at various levels internationally, regionally and locally which could be applied in the fight against unjust treatment of working children in South East Nigeria. First among them is the United Nations *Convention on the Right of the Child (CRC)* of 1989. Others are the regional *African Charter on the Rights and Welfare of the Child (ACRWC)* of 1990 and the *Child Right Act (CRA)* that was enacted by the Federal Republic of Nigeria in 2003. These legal instruments are supported by the *Constitution of the Federal Republic of Nigeria*, which in section 12(3) provides for all citizens adequate security, benefiting employment with just conditions of work and protection from exploitation. Section 28 of the *CRA* provides that:

(1) Subject to this Act, no child shall be – (a) subjected to any forced or exploitative labour or (b) employed to work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character or (c) required, in any case, to lift, carry or move anything so heavy as to be likely to adversely affect his physical, mental, spiritual, moral or social development or (d) employed as a domestic help outside his own home or family environment.

In this article, Nigeria as a member state of the United Nations domesticated the provisions of the *CRC* in relation to working children. Many policies of the Nigerian government support these legal instruments.

As earlier argued in Chapter 4, article 32 of *CRC* condemns the economic exploitation of working children and also frowns at any work that adversely affects the integral development of children. However, the formulation of the *CRC* has more of a Western imprint that leaves it less directly applicable to the African context. However, as mentioned elsewhere, the *CRC* is at the prescriptive level and it is understandable that it might need contextualization, hence the reason for the *CRC* calling on member states to domesticate the *CRC* and ensure its enforcement in

particular contexts. The *CRC* however contains other rights that are within the civil and political spheres, which hold for all. Rights generally that are related to economic, social and cultural issues have different applications in particular contexts. As such, that child labour legislation cuts through economic sphere, (knowing that each country's economic strength differs) and does not in any way detract from the relevance of the *CRC* even when its applicability is not the same in developing countries as in developed countries. Article 4 of *CRC* states: "With regard to economic, social and cultural rights States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation." Article 15 (1) of the *ACRWC*, like the *CRC*, prohibits child labour and further in article 15(2) emphasizes the implementation of the rights of working children both in the formal and informal sectors of the economy. Additionally, article 31 of *ACRWC* acknowledges that children have responsibilities towards their parents, family and the state. In developing countries like Nigeria, an understanding of work-free childhood is an unaffordable luxury and a deprivation of an activity that contributes to the integral development of children. A new formulation of the rights of working children as a theologico-legal resource must take into consideration the contextual factors that are not considered in the *CRC* such as, religion and implementation of child labour legislation in developing countries, especially in the informal sector of the world of work and production.

It is worthy to note that out of the eighteen Universal Human Rights Treaties adopted by the United Nations, the Holy See, the seat of the Catholic Church has ratified five, with reservations and declarations. The good side of it is that out of the five

Conventions ratified by the Catholic Church, three of them relate to children namely, *CRC* and its two *Optional Protocols*. So at present, the Catholic Church uses the terms “human rights” and “natural rights” interchangeably in the sense that she insists on rights based on the dignity of the human person created in the image of God but not in its secular sense, that is, grounded on individual liberty. An understanding that the use of the language of rights that is God-centred is an advantage to promoting and enforcing the rights of working children in South East Nigeria, an area predominantly made up of Catholic Christians. This led to a deduced theologico-legal resource of rights, which if applied to South East Nigeria could preserve and protect the dignity of working children and the work they do from unjust and exploitative child labour.

The research has shown the legal foundation for the rights of working children. The research has also shown the extent the Catholic social teaching could help in the fuller realization of the rights of working children, ennoble working children and the work they do in South East Nigeria. In view of all that research has said, the researcher hereby proposes a theologico-legal resource as a panacea to the unabated abuse of the rights of working children in South East Nigeria. This will be our primary focus in the following section.

### **8.3.2 A theologico-legal resource of children’s rights for working children**

In this section, what follows is a reformulation of the child’s rights legislation for working children in a theologically sensitive manner. But before a new model for rights of working children is formulated, it is to be observed that all human rights

provisions are just “human rights” without a suggestion of any particular religious background. Secondly, there is a presumption in human rights legislation that the family is always the best friend of children and will always work to their best interest. This presumption could be misleading and could expose children to unchecked danger as children work more in informal sectors of the economy, including in the family and with family members (see Ibanga, 2007; Okoli, 2009).

It is noteworthy that the proposed theologico-legal resource places the rights of working children within a familiar theological background as it is connected to natural law/rights tradition and Catholic social teaching. As this research had argued, due to great number of Catholics in the area, South East Nigeria, a Christian theological understanding of the rights of working children would seemingly be more attractive to Catholics and other Christians in similar contexts, than child’s rights legislation that are purely based on legal frameworks. It may be easier to get the Catholic Bishops’ Conference of Nigeria (CBCN) to convince Catholics to abide by such law, promulgate it through their communiqués that always have firm impact on the Catholic populace. The CBCN could also engage priests to play the vital role of promoting it in parishes during such programmes like Catechetical weeks. Evidence has shown that people take seriously communiqués from the CBCN on such topical issues, such as the “Prayer for Nigeria in distress” or their communiqués on the role of Catholics during political elections.<sup>52</sup> This prayer was given by the CBCN in response to suffering in Nigeria, which every Catholic faithful received

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<sup>52</sup> See Governance in Nigeria and the common good: A Communiqué issued at the end of the First Plenary Meeting of the CBCN at the Resource Centre, CSN, Durumi, Abuja, 10 -16 March 2019. Available at: <https://www.cbcn-ng.org/communiqués.php> (Accessed: 20/04/19).



enthusiastically. At this point, the research suggests the following theologico-legal resource for preserving the human dignity and protecting the rights of working children in South East Nigeria, acknowledging though that it is non-exhaustive. These are samples of theologically founded child-sensitive rights for working children that could be developed further.

Article 1: God created human beings in his own image and likeness. Children are created in the image of God and therefore possess human dignity by virtue of being human. Human dignity demands human rights.

Article 2: Children are workers in a different sense as adults are regarded as workers. Children are workers in their own terms. As such, children's right to work should not come into conflict with other rights specifically reserved for children such as, the right to education.

Article 3: Work does not depreciate the human dignity possessed by children but rather ennobles it. Human life is sustained through work. Work demands human rights.

Article 4: Children have the right to work that ennobles their dignity as human beings. Children have rights to engage in agricultural, horticultural and domestic work according to their capacity and age.

Article 5: Working children have rights to work even when their work has no material or financial merits. Through their work, they participate in the creative work of God and ultimately join their toils to the saving acts of Jesus Christ on the cross.

Article 6: All working children have rights to a good and safe condition of work. Unsafe working conditions denigrate the divinely bestowed human dignity of working children. Any form of exploitation of working children denies them their God-given rights that accrue from the dignity of the human person and human labour.

Article 7: Human work has its own dignity but some forms of work essentially have no moral worth and as such tries to denigrate the human dignity of the one who does it. Such exploitative activities include child trafficking for whatever reasons, child prostitution, child marriage, bonded labour and the like.

Article 8: In accordance with the natural dignity that human labour possesses for the fact that God commands it, working children have rights to rewards even when they work in their families. The rewards must not be in material or financial form especially within the family or informal sector of the economy. They have the rights to be appreciated even when they engage in work as part of education or their responsibility to support their parents, family or state.

Article 9: Working children have rights to rest and leisure in order to help them recover properly after work and not be adversely affected in their pursuit of formal education and integral development.

Article 10: In addition to the rights of the child to work and the right to education, children have explicit right to play and engage in recreational activities. Children have rights to freely participate in the cultural, social and artistic life of their community. The family, state and society should endeavour to provide and encourage children to engage in such activities for they contribute to their integral formation and development.

Article 11: Children have rights to refuse work in the night time as this does not allow them to develop properly and might impede growth.

Article 12: Children have rights to refuse work if the working conditions do not protect their human dignity.

Article 13: Children have rights to refuse any work that is hazardous or exploitative. Children have rights to refuse any work that would adversely affect their mental, spiritual, physical, moral or social development.

Article 14: Children have rights to refuse work outside their family unless they are duly registered with the local authority. A child has no right to work outside his/her family for more than six months without proper registration with the local authority, where the nature of work is to be ascertained and approved and a periodic evaluation put in place.

Article 15: In order to ensure that no child is compelled beyond his or her energy level and health status, working children have rights to healthy food and medication when needed.

Article 16: Since work is meant to help in the proper development of working children, children have the right to request for an explanation of how any work would be to their best interest.

Article 17: Since working children have responsibilities towards their parents, family and state, they (parents, family and state) should ensure that the rights of working children are preserved and protected.

Article 18: Jesus loves, protects and blesses children. Children have rights to be protected and provided for if their refusal of unjust work or working conditions brings them into conflict with their parents, guardians or employer, whether at the formal or informal sector.

Article 19: Working children have rights to form solidarity aided by adults who must be guided by the best interests of children. Working children have the right to be heard and not only to be seen as workers.

Article 20: The right to respect the working children's views must be upheld insofar as it is in their best interest.

It is pertinent to note that the sample articles above spell out rights specific to children as workers. The principles are child-sensitive theologico-legal formulations of the rights of working children. They recognise the rights of children to work within specified contexts, that is, as children are allowed to work within an understanding that work does not deprive them their other rights. The articulation of the 20 sample rights of working children proposes a new way for fighting exploitative child labour, that is, through the formulation of the right to reject exploitative work. The right to reject exploitative work by children addresses all exploitative work, especially in the informal sector where the types of work that children engage are always changing and as such makes it difficult for legislation and law enforcement agents to reach. It also addresses the capacity of the child to do a particular work, which more often is determined by the adults. A child that knows his/her capability has right to reject exploitative work or work beyond his/her capability. Adults are called to protect children from exploitative labour. In addition, the right to reject exploitative work puts the right to child protection from exploitative work in the hands of children as well, in an official manner. However, the right to reject exploitative work could also lead children to avoid simple tasks they are able to perform. The abuse of the right to reject exploitative work is to be put in check by the Catholic agencies for the protection of working children.

In relation to the four general principles already examined in chapter 4 as contained in the *CRC*, *ACRWC* and *CRA* namely, the principle of non-discrimination, the principle of the best interest of the child, the principle of the right to life, survival and development, and the principle of the respect for the views of children, it should be added that the right of the child to work is to be located within the context that it is

enriched and promoted by these principles. By acknowledging that the value of the work children do has its own value protects it from discrimination in adult world of work and production. Children's right to work and work itself should contribute to the life, survival and development of children. Work as performed by children should not be against their integral development. Children's work should always be to their best interest and as such, all economic exploitation of working children should be avoided. In proposing the rights to reject work by the researcher, the rights to reject exploitative work seem to have given a stronger support to respect for the views of children as individuals. It is also true that the principle of right to respect the views of children is also evident in the suggested children's work/solidarity group, which also gives children a voice as a group.

### **8.3.3 Introducing the principle of “See, Dialogue, Judge, Act, Accompany” for ennobling working children, their work and preserving their rights as workers.**

The social justice principle of “See, Judge, Act” could be modified and applied for the realization of the rights of working children and the preservation of their human dignity. The “see-judge-act” method was developed by a Belgian Cardinal Joseph Cardijn (1882 – 1967) founder of Young Christian Workers who ministered as a priest for poor workers. He was a Cardinal later in his life. He also inspired Young Christian Students and Christian Family Movement. As one of the Second Vatican Council Fathers, he made a major contribution in the drafting of the document that was to be promulgated as the *Declaration on Religious Freedom*. Cardinal Cardijn's

method of “see-judge-act” process for reading the signs of the time and ensuring justice became popular among Catholic social action groups.<sup>53</sup>

Since moving from belief to action in order to preserve social justice is an essential requirement of our faith, this approach was later recommended in 1961 by Pope John XXIII in his encyclical, *Mater et Magistra (MM)*:

The teachings in regard to social matters, for the most part, are put into effect in the following three stages: first, the actual situation is examined; and then, the situation is evaluated carefully in relation to these teachings; then only is it decided what can and should be done in order that the traditional norms may be adapted to circumstances of time and place. These three steps are at times expressed by the three words: see, judge, act.

(*MM*, 236).

However, applying this method as it is to working children in South East Nigeria would seem to require more clarity and precision. This research has therefore modified the “see-judge-act process” to “see-dialogue-judge-act-accompany”. This would make this process clearer to children and would possibly evoke greater engagement and commitment. This five-stage process is meant to be a cycle. A brief explanation of each of the stage in the whole process would be of benefit to Catholic agencies and those working with children in other areas.

The first stage of the “see-dialogue-judge-act-accompany” process for social action in relation to ennobling the work that children do and preserving the rights of working children is “see”. Pope John XXIII briefly explained this as examining the

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<sup>53</sup> For further reading on the social justice principle, see Australian Catholic Social Justice Council (2011) *Reading the Signs of the Times* Available at: [www.socialjustice.catholic.org.au](http://www.socialjustice.catholic.org.au) (Accessed: 24/09/2018).

“actual situation” (*MM*, 236). The lived reality of working children should be explored at this stage, at the individual and community levels. The causes of concern should be identified and the primary data of the situation including how this affects working children and how they respond to the situation. The Catholic agent should at this level be able to know and observe the situation, noting down the facts and what could be learnt from the experience. How the experience makes the agent feel and how it touches him or her would be a veritable tool in analysing and proffering solution to the issue of child labour practices.

The second stage according to Cardinal Cardijn and as promoted by Pope John XXIII is “judge”. However, this research suggests that issues that are related to children need children’s voice as well. In order to protect and preserve the best interest of children, their views and how they feel should be sought. The second stage, therefore, is “dialogue”. Dialogue as a method is assessing the social situation involving children giving them a voice in issues concerning them. It may have been included at the first stage but a more pronounced attention is needed to make it more child-centred. The dialogue here is to help the adult worker gain entrance into the world of working children. The aim of this research is not only to fight exploitative unjust child labour but also to promote a good practice of child labour. Dialogue would help the Catholic agent to ascertain the peculiarities of children involved in child labour, how it affects them, what they think about what they do and the ways they need help.

The third stage is “judge”. This stage deals with social analysis and theological reflection in attending to the circumstances of working children. This social analysis



stage is meant to assist in obtaining a more comprehensive picture of the situation observed and dialogued about in previous stages. A deeper exploration of the root causes, why the situation exists is explored. This could be a weaving of structural relationships along the lines of cultural, economic, historical, political and social factors. The person who owns and controls the economy or workplace where children work should be ascertained. The impact of political decisions that affect working children and if the interest of children is taken into consideration in what concerns them are noted. Those who are involved directly or indirectly in the affairs of working children and those who ought to have been involved but were not involved should be noted. The historical development or trend of working children and the work they do is to be explored. The cultural values that work for a good practice of child labour and those that encourage exploitative child labour should be investigated.

This leads to a theological reflection on the issue of working children and the work they do. Furthermore, the “judge” stage places the experiences of working children in dialogue with religious tradition. The main sources for the theological reflection are the Bible and the Catholic social teaching. Scripture can assist in interpreting the experiences of working children in a new way. It would help to extract Biblical values in such experiences. The Catholic social teaching should be used to see if it has addressed such experiences, particular contexts, or even themes that could be of relevance in responding to such situation such as, human dignity, human rights, and the common good. From this theological reflection, new insights and meaning are deduced that would help the Catholic agencies and her agents to respond in the required manner.

The fourth stage is “act”. From the insights gained from theological reflection, an action is to be taken to encourage good practice of child labour and to ensure that the rights of working children are preserved and respected. The action to be taken is not only to address root causes of an anomaly but also to encourage a healthy practice of child labour. Actions should also be taken to empower children if they are faced with challenges or disadvantages in their work. This stage should be able to highlight areas that need further research for a clearer action.

The last stage according to this research is not the “action” stage. Although one could argue that the fifth stage “accompany” according to this research as a stage could be seen as part of “action” stage. However, this research suggests that it would seem to be more beneficial if children know they will be assisted and accompanied in their world of work and production. To accompany working children would seem to offer them protection and psychological buffer in the face of the toils and challenges in the world of work and production. It is to be noted that some children involved in regular child work are from dysfunctional families, such as families in crises, divorced, separated or have lost either one or both parents. It is when the Catholic agent accompanies working children that he or she further observes new things that need to be addressed. In this manner, the cycle for social justice principle for working children continues. The issue of accompaniment will be discussed further within the foster family support group for working children in later section.

#### **8.3.4 Children's workgroup/solidarity**

One of the recurring themes in the Catholic social teaching is the right for workers to form solidarity. It may be right to say that children may not have been given paramount attention in *LE* but were not explicitly excluded. It has been asserted that children in Africa, including Nigeria, are seen but not heard. If the right to the best interest of the child as demanded by the *CRC* is to be respected, then the right to respect the views of the child has to be respected as well. *Ipso facto*, there is a need to afford children the platform to exercise these rights so that they do not become spectators in what concerns them. It may not be an easy task to have a children's workgroup but the Catholic agencies should be able to assist in forming children's workgroup/solidarity.

Children's work solidarity should comprise children who work and those who do not work. The aim of the solidarity should first begin with instilling the correct teaching regarding the dignity of work and children as workers. This would help children have a good image of themselves as workers and respect other children who work as well instead of looking down on them. This solidarity will create an avenue for teaching children their rights and what they should do, should anyone deny them of their rights. So this solidarity serves multiple purposes as a support group, educational group and a group that gives voice to the needs of working children in an adult world. This group may be guided by adults but must always keep the best interest of the child as the primary principle.

### **8.3.5 Foster family support groups for working children.**

The relevance of foster family support groups for working children is necessary as some working children are from dysfunctional families. It is precisely to ensure that every child worker is accompanied. For a child worker who has a family, the family is to provide work accompaniment unless for some reasons a work foster parent is needed. Foster family support groups will be made up of Catholic parents who are willing to offer themselves to foster and accompany working children who may be in lack of support of an adult due to divorce, separation, death of one or both parents, or as a result of crises in the family. The government should properly accredit such parents or adults to be able to perform such a role. This research is meant to encourage good work ethics for working children. Catholic adults who understand the dignity of working children and the work they do as well as child labour rights perspectives will be of assistance.

The support groups would need to meet for educational purposes for themselves in order to come to terms with the nature of working children and the work they do. They could also be involved in the enlightenment campaign on the correct perspective of evaluating working children and the work they do. Parents in this group would be willing to foster any child worker who may be in need. These children may not need to live with their work foster parents. A periodic meeting may be fixed where a child worker meets with another child social worker on a one-on-one basis to share his or her experiences and concerns with the work foster parent. In circumstances where it is possible, a short stay may be arranged where the child worker can stay a few days with the work foster parent.

### **8.3.6 Catholic agencies for working children**

The aim of this research has always been to ensure that the rights of working children are preserved and protected through the assistance of the Catholic Church as an institution as well as on the individual or group basis. The afore-mentioned suggestions namely, the theologico-legal resource of the rights of working children, the children's workgroup solidarity and the foster family support group will achieve a fuller goal if it is overseen by the Catholic agencies for working children and by the government. There is a need to establish Catholic agencies in every diocese in South East Nigeria in order to employ, enforce and oversee the new findings of this research in concrete situations of working children.

The Catholic Church in Nigeria has established Justice, Development and Peace Commission (JDPC) in all the dioceses in Nigeria, saddled with a number of responsibilities, including the fight against exploitative child labour and preserving the rights and dignity of working children. However, JDPC is not totally devoted to the welfare of working children.<sup>54</sup> There is a need to have Catholic agencies that are especially dedicated to ensuring that children are not denied of their rights as workers and that their human dignity is preserved. Such Catholic agency should be registered with the government so as to be able to operate with a full license on issues concerning working children. It is also the duty of Catholic agencies to ensure that children do not avoid simple tasks they can be of help while employing the right to reject exploitative work. It is arguably difficult to check on the abuse of the right of children to reject exploitative work as what a child may classify as exploitative or

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<sup>54</sup> See Ijebu-Ode JDPC, Nigeria. Available at: <http://www.jdpciwebuode.org/welcome-to-jdpc/> (Accessed: 27/05/19).

beyond his/her capability may not be actually so. The Catholic agency will be responsible for keeping accurate records of the nature of working children and will in line with the suggestions made in this research give a helping hand to working children, ensuring that the dignity of children and the work they do is preserved and protected.

#### **8.4 Further research**

Having gone this far in justifying the thesis and proposing a theologico-legal resource for working children, the researcher deems it expedient to suggest areas for further research on the best way the findings of this research can be issued to Catholics in South East Nigeria. This could be through the CBCN or other Catholic agencies in South East Nigeria. The proposed further research should include a study of the best way the recommendations of this present research could be best applied for a fuller realization of the rights of working children in South East Nigeria and similar contexts. Other complementary research areas are as follows:

There is a need for a further research on the inclusion of other Christian contexts in the analysis of the rights of working children in South East Nigeria. This research focused on the Catholic Church and her social teachings in relation to the rights of working children. Conducting research that involves other Christian denominations would serve a complementary purpose in the fight against exploitative child labour and preserving good work ethics for children in South East Nigeria, a region predominantly made up of Christians.

More so, conducting a research on the more efficient ways of enforcing child's rights legislation in South East Nigeria by government's involvement of Christian Churches is relevant. Conducting further research that would focus on how the government can involve all churches and religions in protecting the rights of working children and preserving their dignity would be necessary. It is arguably true that Nigerians are deeply religious people. As such, using the platform of religion to advance the rights of working children in line with the child's best interest would always be commendable.

Furthermore, conducting empirical research on the current nature of working children in South East Nigeria will be an advantage. One of the limitations of this research is its inability to get the current statistics on the breaches of the rights of working children in South East Nigeria. States in South East Nigeria seem to be a homogenous society, similar in culture and language. They also have similar trades and economy. Consequently, an empirical study of practices that result in the abuse of the rights of working children would help to provide a context in which a further research on preserving the rights of working children could be based. Therefore, an empirical study is recommended.

On a wider perspective, an analysis of the rights of working children with the teaching of Islamic religion in Nigeria will be good. There is a need to conduct a research on the analysis of the rights of working children with respect to the teaching of Islamic religion in Nigeria. The majority of the northern population is of Islamic religion and child labour is practised in this area and at various degrees. It is true that there are other religions in Nigeria, but a complementary study on how the rights of

working children could be safeguarded and the dignity of working children preserved employing Islamic teachings would be of value. A research that aims at proffering a complementary report from the point of view of the Islamic faith is recommended as a backup to the Catholic perspective discussed in this research.

## **8.5 Concluding remarks**

This research set out to provide a theologico-legal resource for the protection of the dignity of working children and the preservation of their rights as workers. It sought to achieve this through the analysis of the Catholic social teaching in relation to the rights of working children. It sets its context in South East Nigeria. It argues that contexts influence the understanding of childhood and child labour. Consequently, it suggests a nuanced understanding of working children and the work they do that is sensitive to the influence of context. It argues that Nigerian understanding of working children and the work they do is peculiar. It is to be understood that work is seen as part of the life of children as well as adults. The research, therefore, focused not just on the fight against unjust child labour but also ways of encouraging working children by preserving their human dignity, protecting their rights as working children and upholding the dignity of the work they do. The research showed that the civil legislation is insufficient in tackling the problem of child labour in South East Nigeria.

In seeking for a solution, the researcher argued that an understanding that human rights may have grown out of the natural rights tradition created an opening for a more Catholic embrace of child's rights legislation. The natural law and rights



tradition recognises the human person as created in the image of God. As such, human dignity is bestowed by God and is both protected by modern human rights and the Catholic tradition of natural law and rights.

The research has shown that the principal documents on the Catholic social teaching have limited references to working children. The research hence employed *Laborem Exercens* (LE) as a modern Catholic social teaching that deals with human work in relation to working children. The encyclical LE, however, does not deal with working children as its focal point is the labour market meant for adults. This notwithstanding, the encyclical proved to be of great relevance when applied to the welfare and protection of the rights of working children.

The research has opened up other areas that need to be investigated. As the research does not include a fieldwork, suggestions have been made regarding other complementary research that could be carried out in order to achieve a fuller realization of the rights of working children in South East Nigeria and in similar contexts. There is hope of an increase in the Catholic Church's understanding of rights language and its use in Catholic ministries. Although this research has justifiably achieved its goals, the research on how the rights of working children are better preserved and protected especially in the developing countries like Nigeria continues.

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